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11
LAWS OF BUSINESS

FOR

**All the States and Territories
OF THE UNION**

AND THE

DOMINION OF CANADA

WITH

FORMS AND DIRECTIONS FOR ALL TRANSACTIONS.

AND

**ABSTRACTS OF THE LAWS OF ALL THE STATES AND
TERRITORIES ON VARIOUS TOPICS.**

BY

THEOPHILUS PARSONS, LL.D.,

**LATE PROFESSOR OF LAW IN HARVARD UNIVERSITY, CAMBRIDGE, AND AUTHOR OF TREATISES
ON THE LAW OF CONTRACTS, ON MERCANTILE LAW, ON THE LAW OF PARTNERSHIP,
ON THE LAWS OF PROMISSORY NOTES AND BILLS OF EXCHANGE, ON THE LAW
OF INSURANCE, AND ON THE LAW OF SHIPPING AND ADMIRALTY.**

NEW ENLARGED EDITION.

**REVISED TO DATE, WITH VALUABLE FRESH CHAPTERS
ON RECENT BUSINESS LEGISLATION.**

BY

CHARLES M. REED.

HARTFORD, CONN.:

THE S. S. SCRANTON CO.

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THE LAWS OF BUSINESS

CHAPTER I.

THE PURPOSE AND USE OF THIS BOOK.

THE title of this work indicates, to some extent, its purpose and character; but, as they are in certain respects peculiar, it is thought that some remarks respecting them may make the volume more useful. Many years ago, after more than twenty-five years of practice at the bar, I accepted the office of Dane Professor in the Law School of Harvard University. I employed whatever leisure the duties of that office left me, in preparing a series of textbooks on Commercial Law. I have published many volumes; and the manner in which they have been received by my professional brethren, calls for my most grateful acknowledgments. One of those works was entitled "The Elements of Mercantile Law," and was intended as a general epitome of Commercial Law. I began it mainly for the use of lawyers, but at the same time hoping that it might be so written as to be useful to others, who were not lawyers. Before I had made much progress in it, the hope that *one book* could answer these two purposes faded away; and I finally made that work exclusively for lawyers. But the circumstance that many persons who were not lawyers, and did not intend to be, have bought my works,—the remarks that have reached me in relation to them, and particularly in reference to that above mentioned, and many other kindred facts,—have given additional strength to a belief that led me to prepare this volume, for wide and general use.

That belief is, that there is a strong and growing disposition, among the men of business of this country, to understand the laws of business. This disposition, and the actual diffusion of this knowledge, have both greatly increased of late years, and I believe could not have been arrested; for this progress is one element of advancing and improving civilization; and I think it cannot now be prevented.

The institutions and characteristics of this country have their bearing upon this question. We have no sovereign but the law; or rather the people is the sovereign, and the law is their only utterance. It is a sense of this that has here transferred, in some degree at least, the loyalty which in the kingdoms of the Old World attaches to a person, to the law itself, using this word in its most comprehensive sense. This is a good thing; not because the law is always wise and good, but because it will more probably become wise and good, if the whole community recognize it as entitled to obedience, and *therefore* entitled to their constant, earnest, and vigorous endeavors to cure its defects, and bring it into harmony with those principles of truth and justice of which it should be the expression. This great duty rests upon us with the stronger obligation because of our greater intelligence and activity of mind, or more general education and wider extent of common knowledge; all which are none the less facts, although they are sometimes used as mere food for vanity, or as topics for adulation. And all these things together seem to lead to the conclusion, that here and now proper efforts should be made to supply all of the community who ask for it, with accurate and practical information concerning those laws which are of the most immediate concern to them.

So far as concerns the whole people, their wish, if expressed in the simplest terms, would undoubtedly be, to know the laws which must regulate their conduct and determine their rights. This wish admits of but one question; it is, How far is this thing practicable? for so far as it is, its propriety and expediency can hardly be denied or doubted. Indeed, they who would most strenuously oppose any effort to teach the people the law, would do so only on the ground that it is impossible to give to the public any knowledge of this kind which would be wide enough and accurate enough for use. They would think that the very endeavor to learn the law, by persons the main business of whose lives must be of a very different kind, would lead only to a superficial and erroneous view of the subject; and this, under the name of knowledge, is only the most dangerous ignorance.

We should, however, remember, that the people generally, here and elsewhere, must necessarily know a certain amount of law, for without this they cannot live safely in society. For example, men in business must know something of the most general laws

of business; as how to conduct their sales, how to make notes, how to collect them, and the like; and all men must know so much of ordinary law as protects and defines their common and universal rights. Moreover, it will probably be admitted that important mistakes, leading to much loss and difficulty, are every day made, because many do not know those general principles or rules of law which some do know, and which every man in business might know. The question, therefore, can only be, how much of law it is possible and desirable for men in business to learn; and what is their best way of learning it.

Here let me remark, that few persons, who have not had occasion to study and to teach Commercial Law as a whole, are aware of that unity and harmony of its principles, which make it indeed a *system* of laws; or of the prevailing simplicity and reasonableness of its rules. An eminent English lawyer has said, that it was astonishing within how small a space all the *principles* of commercial law may be compacted. It is equally true, that the laws of business are generally free from mere technicality and obscurity; and the reason is, that they are for the most part, and substantially, nothing more than the actual practice of the business community, expressed in rules and maxims, and invested with the authority of law.

The knowledge which a trader acquires of the laws of trade need not, at all events, be superficial; for a knowledge of principles, and an intelligent appreciation of them, however limited it may be, should not be regarded as superficial. And these limits need not be narrow. The extent of this knowledge, and its accuracy, thoroughness, and utility, must obviously depend upon the books from which it is acquired, and upon the manner of using those books.

Considerations of this kind led me to the belief, that it was *possible* to make a book, which should place within the apprehension of every intelligent trader, and of every young man who proposes to engage in any department of business (and this now means almost every man in the community), at the cost of no more time than every one can conveniently give to it, a *useful* knowledge of *all* the elements, or general rules and principles, of the Laws of Business.

In other words, I thought it an undeserved reproach of our Laws of Business, to say that they were not intelligible by all, if

stated with simplicity and accuracy; and an equally undeserved reproach of our Men of Business, to say that they could not comprehend laws, which were made for them, and were intelligible in themselves, and plainly stated. It seemed to me, therefore, that the time had come, in this country, for a book which no one has ever attempted to make anywhere heretofore. This book should contain all the principles of all the branches of the laws which regulate the common transactions of life, stated with all the accuracy that care and labor could insure in any book, and so stated that any man of good capacity, with reasonable effort, might understand all of them; and might, with the help of the Index, find in the volume a true and intelligible answer to the questions which every day arise; and might, if he were willing to make a regular study of the whole book in course, become acquainted with the rules, and the reasons of the rules, by which all business may be safely conducted. And this book I have endeavored to make. I have compiled it, mainly from the law-books I have already made for the profession. If they are accurate and trustworthy, this is so; and I may be permitted to say, that whatever earnest endeavors could do to make those books trustworthy was done; and that accumulated testimony, which I have no right to disregard, encourages me to hope that I have not labored in this respect in vain.

I have made changes which seemed to be required by the intended adaptation of this book to all men and not to lawyers only. These are, first, the omission of citations and references to reports and authorities; next, the addition of some elementary rules and principles and definitions, which would not be necessary in a book for lawyers only; and lastly, the use of common or non-professional language, the general omission of merely technical words, and the full explanation of such words when they are used.

If there are those who are preparing for a life of business, or are now engaged in it, who will study this volume, in course,—dwelling on what seems most important, and examining with care what seems obscure,—I venture to hope that they will find the work so arranged, and the meaning so expressed, that what comes before explains what follows, and every part of it will be intelligible. At the same time, I have labored to make everything plain *by itself*, as far as that was possible, that it might

not disappoint those who, without reading it in course, look into it for an answer to questions as they arise. And for such persons I have endeavored to have the Index of Subjects (at the end of the book) exceedingly full and minute.

I have added a great variety of Forms. Of course no collection of Forms could be made large enough to meet the exact facts of every case that can arise. But it is possible to give accurate Forms of *all sorts*; and any person can select the Form *nearest* to his particular need, and easily make the alterations which the facts of his case require.

CHAPTER II.

BUSINESS LAW IN GENERAL.

ALL law is divided into what it called, in law books, common law and statute law. We have legislatures, and our fathers had them; and a very large proportion of the laws now binding upon us were made by those legislatures in a formal and regular way. All these are Statutes; and taken altogether, they compose the Statute Law. Besides this, however, there is another very large portion of our law which was not enacted by our legislatures; and it is called the Common Law. In fewer words, all law was regularly enacted, or it was not. If it was, it is statute law; if it was not so enacted, it is common law.

The common law of most of the several States of this country consists, in the first place, of all the law of England—whether statute or common there—which was in force in that State at the time of our independence, and recognized by our courts, and which has not since been repealed or disused. And next, of all those universal usages, and all those inferences from, or applications of, established law, which courts in this country have recognized as having among us the force of law. For this common law there is no authority excepting the decisions of the courts; and we have no certain means of knowing what is or is not a part of the common law, excepting by looking for it in those decisions. Hence the value and importance of the reported

decisions, which are published by official reporters in all of our States. In Louisiana, however, the law is based on the French law in force when this State was a French colony, and which is largely derived from the Roman or Civil Law. And in the Philippines and Porto Rico the Spanish law—also derived from the Civil Law—still prevails to a very considerable extent.

A very important part of the common law, especially to all men in business, is what is called, by an ancient phrase, the Law-Merchant. By this is meant the law of merchants; or, more accurately, the law of mercantile transactions; and by this again is meant all that branch of the law, and all those principles and rules, which govern mercantile transactions of any kind. This great department of the law derives its force in part from statutory enactments, but in far greater part from the well-established usages of merchants, which have been adopted, sanctioned, and confirmed by the courts. For example, a large proportion of the law of factors and brokers, most of that of shipping and of insurance, and nearly all the peculiar rules applicable to negotiable paper (or promissory notes and bills of exchange payable to order), belong distinctly to the Law-Merchant.

The courts of this country have always acknowledged that a custom of merchants, if it were proved to be so nearly universal and so long established that it must be considered that all merchants know it and make their bargains with reference to it, constitutes a part of the law-merchant. And the law-merchant is itself a part of the common law, and therefore has the whole obligatory force of law. This would not be true, if the custom was one which violated statute law, or the obvious principles of public policy or common honesty. But we may suppose that no custom of this kind would ever be so generally adopted and established as to come before the courts with any claim for recognition as law.

A great deal of the language of every art or science or profession is technical (indeed, *technical* means belonging to some *art*), and is peculiar to it, and may not be understood by those who do not pursue the business to which it belongs. This is as true of law as of everything else. In this work, however, I have avoided as far as possible mere law-words; and when I have used them have explained them at the time. There are some, however, which cannot be dropped: they express exactly what

is meant, and we cannot express it without them, unless by long and awkward sentences. A good instance of this is in those words which end in *er* (or *or*) and in *ee*. As for example, promisor and promisee, vendor and vendee, indorser and indorsee. These terminations are derived from the Norman-French, which was, for a long time, the language of the courts and of the law in England. And it might seem that we had just as good terminations in England, in *er* and *ed*, which mean the same thing. But it is not so. Originally they meant the same thing, but they do not now; for both *er* and *ee* are applied in law to persons, and *ed* to things; so that we want all three terminations. For example, indorser means the man who indorses; indorsee means the man to whom the indorsement is made; but the note itself we say in indorsed. So vendor means the man who sells, vendee means the man to whom something is sold, and the thing sold is vend^d. And the promisor makes the promise, the promisee receives it, and the thing to be done is promised. We have retained not only this phraseology, but some other words or phrases, of which similar things might be said.

CHAPTER III.

INFANTS, OR MINORS.

SECTION I.

GENERALLY, all persons may bind themselves by contracts. But some are incapacitated. The incapacity may arise from many causes; as from insanity; or from being under guardianship; or from alienage in time of war; or from infancy; or from marriage.

All persons are infants, in law, until the age of twenty-one. But in many of the States, women are considered of full age at eighteen, for some purposes.

The rule of law is, that a person becomes of age at the beginning of the day before his twenty-first birthday. This rule op-

poses the common notion, and it rests on no very good reason, but on ancient authority and constant repetition. The reason assigned is, that the law takes no notice of parts of a day. The effect of the rule is, that a person born on the 9th of May in the year 1888, becomes of age at the beginning of the 8th of May, 1909, and may sign a note, or do any thing, with the full power of a person of age, on any hour of that day.

The contract of an infant (if not for necessities) is voidable, but not void. That is, he may disavow it, and so annul it, either before his majority, or within a reasonable time after it. As he may avoid it, so he may ratify and confirm it. He may do this by word only. But mere acknowledgment that the debt exists is not enough. It must be *substantially*, if not *in form*, a new promise. In England, and a few of our States, it is provided by statute, that this confirmation can only be by a new promise in writing, signed by the promisor. The rule seems to be useful, and we think it will be more widely adopted.

It must be a promise by the party, after full age, to pay the debt; or such a recognition of the debt as may fairly be understood by the creditor as expressive of the intention to pay it; for this would be a promise by implication. There are no particular words or phrases which the law requires or favors as a confirmation. No ratification or confirmation can be used in any action which was brought before the ratification was made. It must also be made voluntarily, and with the purpose of assuming a liability from which he knows that the law has discharged him. And if it be a conditional promise, the party who would enforce it must prove the condition to be fulfilled. Thus, if the plaintiff relies on a new promise, and asserts and proves that the defendant said, after full age, "I will pay when I am able," he must also prove that the defendant was able to pay when the action was brought.

If an infant's contract is not avoided, it remains in force. And it may be confirmed without words; and the question sometimes occurs, whether confirmation by mere silence, after a person arrives at full age, prevents him from avoiding his contract made during his infancy. As a general rule, mere silence, or the absence of disaffirmance, is not a confirmation; because it is time to disaffirm the contract when its enforcement is sought.

But if an infant buys property, any unequivocal act of ownership after majority—as selling it, for example—is a confirmation of the purchase. And, generally, a silent continued possession and use of the thing obtained by the contract is evidence of a confirmation; therefore, if an infant buys a horse, and gives his note for it, and after he is of age the seller puts the note in suit, the buyer may return the horse and refuse to pay the note; but if he keeps the horse, this is considered evidence of a confirmation of the note. The evidence of confirmation is much stronger if there be a refusal to re-deliver the thing when it can be re-delivered; and is generally conclusive, when the conduct of the party must either be construed as a confirmation, or, if not so construed, must be regarded as fraudulent, or wrongful. Thus, where an infant purchased a potash-kettle, and gave his promissory note for the price, it being agreed by the parties that he might try the kettle, and return it if it did not suit him; and the vendor, after the infant became of age, requested him to return the kettle if he did not intend to keep it; but he retained and used it a month or two afterwards. The court held that this was a sufficient ratification of the contract, and that an action might be sustained on the note.

The great exception to the rule that an infant's contracts are voidable, is when the promise or contract is for necessities. The rule itself is for the benefit and protection of the infant, and the same reason causes the exception; for it cannot be for the benefit of the infant that he should be unable to purchase food, raiment, and shelter, on a credit, if he has no funds. The same reason, however, enlarges this exception, until it covers not only strict necessities, or those without which the infant might perish, or would certainly be uncomfortable, but all those things which are certainly appropriate to his person, station, and means.

There is no exact dividing line which could make this definition precise. But it is settled that mercantile contracts, as of partnership, purchase and sale of merchandise, signing notes and bills, are not necessities, and that all such contracts are voidable by the infant. So, if he gives his note even for necessities, he is not bound by it; but may defend against it on the ground that it was for more than their true value; and the jury will be instructed to give against him only a verdict for so much as the necessities were worth.

If he borrows money, to be expended in the purchase of necessaries, and gives his note, the debt, or the note, has been held, at law, voidable by the infant. But our courts would now hold an infant liable for such a debt; and it is well settled that an infant is liable for money paid at his request for necessaries for him; and if he give a note for necessaries with a surety who pays it, the surety may recover against the infant.

If an infant avoid a contract, he can take no benefit from it; thus, if he contracts to sell, and refuses to deliver, he cannot demand the price; or if he contracts to buy, and refuses the price, he cannot demand the thing sold.

An infant is, as liable for torts (by which the law means *wrongs* or offences) as an adult; but it has been held that if he fraudulently represented himself as of age, when he was not and so made a contract which he afterwards sought to avoid he could not only avoid the contract but was not answerable for the fraud, it being a part of the same transaction. But if he disaffirms a sale, for which he has received the money, he must return the money, if he still has it; because keeping it would be a *wrong*, or a confirmation of the sale. So if after his majority he destroys or puts out of his hands a thing bought while an infant, he cannot now demand his money back, as he might have done on tendering the thing bought; for by his disposal of it he has acted as owner, and confirmed the sale.

In general, if an infant avoids a contract on which he has advanced money, and it appears that he has received from the other party an adequate consideration for the money so advanced, which he cannot, or will not restore, he cannot recover back the money which he advanced. But if an infant has engaged to labor for a certain period, and, after some part of the work is performed, rescinds the contract, he can recover for the work he has done, as much as that work was worth.

The contract of an infant is voidable only by him, or by those having a right to act for him, and not by the other party. The election to avoid or confirm belongs to the infant alone; and his having this right does not affect the obligation of the other party. Therefore, one who gives a note to an infant, or makes any other mercantile contract with him, must abide by it, unless the infant annuls it, which he can do if he chooses to.

But if the note were given or the contract made by a fraud on the part of the infant, the injured party has the same right of defending against it on this ground as if the fraudulent party were not an infant. And it is a universal rule of the law, that no contract which is tainted with fraud is valid against an innocent party; therefore, a wilfully false representation of the infant that he has reached his majority would be a fraud, and would enable the party dealing with him to set the contract aside.

A father is bound to supply an infant child with necessaries; and, if he does not, is liable for their value to any person who supplies them. And for these, as we have seen, the child himself is also liable.

Although in most of our States the law does not require that the confirmation or new promise of an adult, of a promise which he may avoid because it was made by him when an infant, must be in writing, it would always and everywhere be better and safer to have this new promise in writing. It should be in substantially this form:

(1.)

I, Henry Thompson, having promised Nathan Green, to (*here describe the promise, whether by a note, or verbally, for goods bought, or the like briefly, but so that there may be no mistake about it*) and at the time of making that promise I was a minor, within the age of twenty-one years, now, in consideration of said promise, I do hereby confirm and acknowledge the same, and promise a full performance and execution thereof. HENRY THOMPSON.

It would often be easier, if both parties assented, simply to give a new note for the amount due. But it might, in many cases, be better that the new promise should tell the story of the old promise for which it is given.

CHAPTER IV.

MARRIED WOMEN.

By the original common law of England and of this country, a married woman is wholly incapable of entering into mercantile contracts on her own account. By the fact of marriage, her husband becomes possessed of all her real estate during her life, and

if a living child be born of the marriage, he has her real estate during his own life, if he survive her. This life-right in her real estate is called, in law, his *tenancy by the curtesy*.

All the personal property which she has in actual possession becomes by common law, absolutely his, as entirely as if she had made a transfer of it to him. But by property in possession the law means only her goods and chattels; or things which can be handled; and which actually are in her hands, or under her direct and immediate control. If she have notes of hand, money due her, or shares in various stocks, these are not considered as things in possession, but as things in action.

Things in possession are those things which one has now in his hands, and *things in action* (called in law *choses in action*), those which are so called because he who owns them cannot get possession of them without an action, if other persons choose to resist him. All debts, and evidences of debt, as bonds, notes, and all shares in stocks, whether national or State, or of incorporated companies or other companies, are things in action. But bank-bills are usually regarded as money, and therefore as things in possession. The common law makes a wide difference between things in possession and things in action in many respects.

The common law of husband and wife as to *things in action* is this. The husband may, if he pleases, reduce them to his possession, and so make them absolutely his own. In general, he does this by any act which is distinctly an act of ownership; as if he demands and collects the debts due to her, or indorses her notes—which he can do in his own name—and sells them, or has the stock transferred to his own name, or, in general makes any final and effectual disposition of these *things in action*. Then they have become absolutely his own.

If, however, he does not reduce them to possession, and dies, and she survives him, her whole right and property revive at his death, without any interest whatever in his representatives. And even if he disposes of them by will, this is ineffectual, unless he had reduced them into his possession while he lived.

On the other hand, the husband is liable, by the common law, with her, for all the debts for which his wife was liable when he married her.

Such, we have said, is the common law of England and of this country. We have stated it, because it is the origin and common

foundation of the law everywhere. But it is not just or right, and has been qualified by statute in all our States.

In nearly all, if not all, of the States a woman's property remains her separate property after marriage, subject to her exclusive management and control, and not liable for her husband's debts. In most of the States all restrictions upon her power to enter into contracts in relation to her property have been removed, and she may make contracts, dispose of her property, and sue and be sued in the same manner and to the same extent as though she were unmarried. In several of the States a system of "community" property derived from the Civil Law prevails, that is, all property acquired by either husband or wife after marriage, except that acquired by gift, bequest or descent is common property, belonging to the two jointly. It is usually subject to the management and control of the husband during their joint lives, and on the decease of either is disposed of in accordance with special statutory provisions.

By the common law a widow is entitled to dower, that is, to the use and occupation during her life of one-third of the lands owned by the husband at any time during the existence of the marriage relation between them; and, on the other hand a husband, on the death of his wife is entitled to an estate by the curtesy—that is, the right of use and occupation of all her lands during his life, provided a child has been born of the marriage between them. These common law rights of dower and curtesy have been abolished, or greatly modified, in many of the States, and other statutory provisions substituted for them.

In nearly all the States a married woman conveys her own real estate, and releases dower by joining in a deed with her husband; but she is not generally bound by covenants therein, and, in many, must be separately examined. In most, she has a certain time, after removal of the disability of coverture, to assert her different rights, otherwise barred. Generally, devises or conveyances to husband and wife create a joint-tenancy, unless the terms of the devise or conveyance are expressly otherwise; that is to say, they have a joint interest in the property while both are living, and on the death of either the title to the whole passes to the survivor.

The wife may everywhere, even by common law, be the agent of the husband, and transact his business for him, making, ac-

cepting, or indorsing bills or notes, purchasing goods, rendering bills, collecting money and receipting for it, and in general entering into any contract so as to bind him, if she has his authority to do so. And while they continue to live together, the law considers the wife as clothed with authority by the husband to buy for him and his family all things necessary in kind and quantity for the proper support of his family; and for such purchases made by her, he is liable.

The husband is responsible for necessaries supplied to his wife, if he does not supply them himself. And he continues so liable if he turns her out of his house, or otherwise separates himself from her, without good cause. But he is not so liable if she deserts him (unless on extreme provocation), or if he turns her away for good cause.

If she leaves him because he treats her so ill that she has good right to go from him and his house, this is the same thing as turning her away; and she carries with her his credit for all necessaries supplied to her. But what the misconduct must be to give this right, is uncertain. Some English cases are very severe on this point. In America the law undoubtedly is, that the wife is not obliged to stay and endure cruelty or indecency.

It may be added, that if a man lives with a woman as his wife, and represents her to be so, he is liable for necessaries supplied to her, and for her contracts, in the same way as if she were his wife; and this even to one who knows that she is not his wife.

The statutes of which we give an abstract hereafter are intended to secure to a married woman all her rights. But in all parts of this country, women about to marry—or their friends for them—often wish to secure to them certain powers and rights, and to limit these in certain ways, or to make sure that their property is in safe and skilful hands. This can only be done by conveying and transferring the property to TRUSTEES; that is, to certain persons to hold the same in trust. This is done by a legal instrument, which is almost always an *Indenture*; by which is meant an instrument under seal between two or more parties. This instrument must set forth precisely, and with legal accuracy, just what the trust is; that is to say, just what the trustees, or the woman, or her husband *may* do, and just what they *must* do. This is one of those instruments which require peculiar care and

exactness, and its preparation should always be entrusted to a skilful lawyer.

I give here an Abstract of the law of husband and wife, as it stands in the Statutes of the several States and Territories.

For statute provisions respecting homesteads, see the Abstract of Laws relating to the Collection of Debts.

ALABAMA.

All property of wife acquired before or after marriage is her separate property and not liable for debts of husband. Her earnings and any damages recovered for injury to person or property are her separate estate. She remains solely liable for torts committed before marriage. Husband is not liable for wife's contracts after marriage, or for her torts, unless he participates. She has full capacity to contract as if sole. She must sue and be sued alone on all her contracts and torts. Husband must join in sale of her lands, unless he has abandoned her, is insane, a non-resident, or imprisoned under two years' sentence. She cannot become surety for her husband. Husband and wife may contract directly with each other, subject to rules of law as to persons in confidential relations. She may carry on business in her own name on filing in the probate court written consent of her husband. A widow having no separate estate is entitled to dower of one-third of husband's lands if issue or estate insolvent, and if no issue and estate is solvent, one-half. If she has a separate estate equal to the interest she would otherwise take as dower, she shall not be entitled to such interest, or if her separate estate is less than such interest, she shall be entitled to enough to equalize her separate estate and such interest. Married Women over eighteen have the same rights as though of full age.

ALASKA.

All property of the wife acquired before or after marriage is her separate property and is not liable for the husband's debts. She can manage and dispose of the same by will as freely as if unmarried. She may recover damages without the husband being joined as plaintiff in the action, and he is not liable for her torts. She can contract as freely as if unmarried. The wife may record a list of her separate property, which will be *prima facie* evidence of her separate ownership, while property not so registered will be deemed *prima facie* to belong to the husband. Conveyances and transfers may be made between husband and wife, and liens created, and either may be the attorney of the other. A woman becomes of age at twenty-one, or upon being lawfully married.

ARIZONA.

All property of the wife owned by her before marriage, or afterwards acquired by gift, devise, bequest, or descent, is her separate property, and is not liable for debts of the husband. All property acquired by either husband or wife after marriage, except by gift, devise, bequest, or descent, is

the common property of both, and during coverture can be disposed of by him only, but she must join in all deeds and mortgages of real estate. She may sue and be sued, in reference to her separate property, as though unmarried, and may carry on business in her own name by complying with certain statutory provisions. If of the age of eighteen years or over, she shall have the sole and exclusive control of her separate property, and may sell and convey her lands without being joined by the husband. Dower and curtesy are abolished and the rights of the survivor are regulated by statute.

ARKANSAS.

In ARKANSAS, a married woman may be seized in her own right of any property not coming from her husband. She cannot be executrix. Her real and personal property are her sole property, and are not liable for her husband's debts, but may be controlled by her, and she may sue or be sued on account thereof, as if unmarried. The filing of a schedule of such separate property in the office of the recorder of the county where she lives, is *prima facie* evidence of her title. May make a will; may insure her husband's life for her own benefit; may manage and carry on business with her separate estate; and her contracts in respect thereto are not binding on her husband. A widow is entitled to dower of one-third of all lands in which the husband had an estate of inheritance during marriage, not released by her, and one-third of the personal property. If no children, she takes one-half of each as against the heirs, and against creditors one-third, if the estate is newly acquired, but if it is ancestral, she will take only a life interest in one-third of the real property.

CALIFORNIA.

A married woman may hold, convey, and devise real and personal estate. Either husband or wife may enter into any engagement or transaction with each other or with any other person respecting property, which either might, if unmarried, subject in transactions between themselves to the general rules which control the actions of persons occupying confidential relations to each other. They cannot by contract with each other alter their legal relations except as to property, and except that they may agree to an immediate separation and make provision for their support and that of children during separation. All property owned before marriage, or subsequently acquired by gift, bequest, devise, or descent, by either husband or wife, with the rents, issues and profits thereof, is his or her separate property. All other property acquired after marriage by either husband or wife, or both, is community property. The wife may, without the consent of her husband, convey her separate property or dispose of the same by will. Neither the separate property nor the earnings of the wife are liable for the debts of the husband, but her separate property is liable for her own debts contracted before or after marriage. The separate property of the husband is not liable for the debts of the wife contracted before marriage. The earnings and accumulations of the wife and of her minor children living with her or in her custody, while she is living separate from her husband, are her separate property. The husband has the management and control of the community property,

with the like absolute power of disposition of the personal property (other than testamentary) as he has of his separate estate, but he cannot make a gift of it, or dispose of it without valuable consideration, or sell or encumber the household furniture or family clothing, without written consent of his wife. She must join with him in the execution of any deed, mortgage or lease for more than one year of the community real estate, and of any conveyance of homestead. Husband can convey property directly to the wife. The community property is not liable for the contracts of the wife made after marriage unless secured by pledge or mortgage thereof executed by the husband. Dower and curtesy are abolished. On the death of the wife the entire community property, without administration, belongs to the surviving husband, except such portion as may have been set apart to her by judicial decree for her support. On the death of the husband one-half of the community property goes to the surviving wife, and the other half is subject to the testamentary disposition of the husband, and in the absence of such disposition goes to his descendants, or if there be no descendants is divided in the same manner as the separate property of the husband, the whole community property being subject to his debts, the family allowance, and charges and expenses of administration. Contracts for marriage settlements must be in writing, executed and acknowledged in like manner as deeds of land, and recorded in every county in which there is land affected thereby. In case of divorce on the ground of adultery or extreme cruelty the community property (except the homestead) is divided in such manner as the court may deem just. In other cases it is equally divided. A married woman may, upon obtaining leave of court, transact business as a *feme sole*. Women arrive at majority at the age of eighteen years.

COLORADO.

All property coming to the wife before or after marriage, except from her husband, remains her sole and separate property. She may bargain and sell, and enter into any contract in regard to the same as if she were sole. She may sue or be sued in regard to her property, person, or reputation, the same as if sole; may make a will, but she cannot bequeath away from her husband more than one-half her property, without his consent in writing. She may carry on business on her own account, and her earnings are her separate property. The husband is liable for the debts of his wife contracted before marriage to the extent of the property he may receive through her, but no further; and the wife may contract debts, sign bonds, bills, and notes, and sue and be sued in regard to the same as if she were sole. Dower is abolished. For educational and family expenses husband and wife are jointly and severally liable. Women are of age at eighteen.

CONNECTICUT.

Husband married before April 20, 1877, has a right to use of wife's real estate during her life and an estate by the curtesy after her death. All real estate conveyed to a married woman, in consideration of property acquired by her personal services during coverture, shall be held by her to her sole and

separate use; and the avails of all sales of the real estate of a married woman, if invested in her name, or in the name of a trustee for her, belong to her. When any man abandons his wife for a continuous period of three years she may, on petition to the Superior Court, be authorized to dispose of her real estate, as if she were a *feme sole*. All the personal property of any woman married since the 22d of June, 1849, and before April 20, 1877, and all the personal property acquired thereafter by a married woman, and the avails of any such property if sold, shall vest in the husband in trust, to receive and enjoy the income thereof during his life, subject to the duty of expending therefrom so much as may be necessary for the support of his wife during her life, and of her children during their minority, and to apply such part of the principal thereof as may be necessary for the support of the wife, or otherwise, with her written assent; and upon his decease the remainder of such trust property shall be transferred to the wife, if living, otherwise as she may by will have directed, or in default of such will to those entitled by law to succeed her intestate estate. A marriage contracted after April 20, 1877, gives neither husband nor wife any interest in the property of the other, except as survivor. Her earnings are her own property. She may contract with third persons or convey property to them as if unmarried. The property of either is not liable for the debts of the other incurred before or after marriage. The purchases of either are presumed to be on his or her own account, unless they have gone to the support of the family, or for her reasonable apparel, or for her support when abandoned by her husband, in which cases he is liable. He is bound to support the family. On the death of either, the survivor has the use for life of one-third of the property, real and personal, of the other, which right is not to be defeated by any will of the other. If there be no will the survivor takes the third absolutely, and if no issue one-half. If either leaves a legacy to the other that legacy is to be taken instead of this right; but the legatee may elect whether to accept the legacy or his or her statutory share. They may contract before or after marriage for a provision in lieu of this statutory share. Neither party abandoning the other is entitled to this share. Parties married before April 20, 1877, may by written contract duly recorded substitute for their rights as existing at that date those given to parties thereafter married as above provided. A married woman whose husband is under a conservator has all the rights as to her property and estate as though unmarried. Married woman may act as executrix, etc. Husband and wife may make conveyances to each other.

DELAWARE.

The real and personal property of a married woman, in any manner acquired, and all the income, rents and profits thereof, are deemed to be her sole and separate property, and she may sell, convey, encumber, or otherwise dispose of the same, and may contract, jointly with her husband or separately, sue and be sued, and exercise all the other rights and powers which an unmarried woman may do under the laws of the State. In purchasing real estate she may give any bond, mortgage, or security, as if sole, and her husband need not join. She may be executrix or administratrix. Subject to her husband's right of curtesy she may dispose of her property,

real and personal, by will. A widow is entitled to dower, as at common law, but if the husband die without leaving issue she is entitled to one-half, instead of one-third, of the real estate. Females attain their majority at 21 years. Guardianship continues until the female is 21 or is married.

DISTRICT OF COLUMBIA.

Property, real or personal, belonging to a married woman at the time of her marriage, or afterwards acquired, including her earnings, is her separate property, is not subject to disposal by the husband, or liable for his debts, and may be conveyed, devised, or bequeathed by her, as though she were unmarried, but no conveyance of her property shall be valid unless she is twenty-one years of age. She may contract, sue, and be sued in her own name in all matters relating to her sole and separate property, but cannot be surety or guarantor. She may make a will at the age of eighteen.

FLORIDA.

All property, real and personal, of the wife owned by her before marriage, or acquired afterwards by gift, devise, bequest, descent, or purchase, shall be her separate property, and not liable for the debts of the husband without her consent in writing executed according to the law governing conveyances by married women. Property of married women may be charged in equity and sold for her debts in certain cases. The wife's property remains in the care and management of the husband, but he cannot charge for such care, nor can she sue him for the rents and profits thereof. Her earnings are her own separate property. Husband and wife must join in any conveyance of her property, and in case of conveyance of real estate she must make a separate acknowledgment apart from her husband. The wife's deed, notwithstanding her minority, is valid if her husband joins with her. A married woman cannot make a contract to bind her separate property unless her husband joins with her; but on petition in chancery she may, by license of court, become a free dealer, and manage and control her own estate, and contract and sue in reference to the same, as though unmarried. Dower as at common law; but the widow may elect, instead of dower, to take a child's share in the estate of her husband, subject to the payment of his debts. A married woman may dispose of her property, real and personal, by will as though unmarried. Suits by married women must be begun as at common law; husband must join or she must sue by her next friend, except in suits relating to her real estate.

GEORGIA.

All property of the wife at the time of her marriage, and all acquired by her during coverture is her separate property, and is not liable for the debts, defaults, or contracts of her husband. She may contract, sue, and be sued in her own name as though unmarried, in all matters relating to her separate estate. She cannot bind her separate estate by any contract of suretyship for her husband or any assumption of his debts, and cannot sell to her husband except by order of court. The husband is bound to support the wife,

and she is presumed to be his agent in all purchases of necessities suitable to her station in life. The wife's separate property is not liable for debts contracted by her as agent for the husband in the purchase of necessities for herself and children, but is liable for debts contracted by her individually for such support. A woman may contract marriage or make a will at fourteen; for other purposes she becomes of age at twenty-one. Dower is allowed only in lands which husband owned at his decease, or to which he obtained title in right of his wife. She may elect to take a child's portion in lieu of dower.

HAWAII.

In HAWAII, the property, real and personal, of a woman remains after marriage her separate property free from the management or control of her husband, and is not liable for his debts. She may receive, hold manage and dispose of property, real or personal, and make contracts as though sole, except that she cannot sell or mortgage real estate or make contracts for personal service without the written consent of her husband, nor can she contract with him. All work or services for others than her husband and children is presumed to be on her separate account. She may sue and be sued as though sole and may act as executrix or administratrix, guardian or trustee. She may carry on business on her separate account by filing in the office of the treasurer of the Territory, a certificate setting forth the name and residence of her husband, the nature of the business, and the place where it is to be carried on. In case her husband absents himself from the Territory, or abandons her or fails to make sufficient provision for her maintenance, she may be authorized by the Circuit Court to make conveyances and contracts as though sole. On the death of her husband she is endowed for life in the income of one third of all lands owned by him at any time during the marriage, including lands leased for fifty years or more of which twenty-five years remain unexpired, and takes absolutely one-third of his personal estate after payment of debts. Curtesy as at common law.

IDAHO.

All property, real and personal, owned by the husband and wife respectively before the marriage, and that subsequently acquired by gift, bequest, devise, or descent, or that acquired with proceeds of separate property, is separate property. The wife may sign, acknowledge, and have recorded a complete inventory of her separate personal property in the county where the parties reside, which is prima facie evidence of her title. She has the full management, control, and power to dispose of her separate property and may enter into a contract in reference to it, in the same manner and with like effect as a married man, and may sue or be sued in the same manner as if single. Her separate property is not liable for her husband's debts. All other property acquired by either party after marriage is community property. The husband has the management and control of the community property, except the wife's earnings for personal services, and rents and profits of her separate estate, of which she has the management and control. She must join in any deed or mortgage of community real estate and in

any conveyance of homestead. The rents and profits of all separate property of both husband and wife are deemed common property, unless it is otherwise provided in the instrument of devise. On the dissolution of the community by the death of either husband or wife, survivor takes one half of community property, subject to community debts; the other half is subject to testamentary disposition of deceased; if there be none, then to the survivor. On dissolution by decree of court, the common property is equally divided, unless, in case of adultery or extreme cruelty, the court otherwise orders. She may dispose of all her separate property, real and personal, by will. Curtesy and dower are abolished.

ILLINOIS.

In ILLINOIS, a married woman may own, in her own right, real and personal property obtained by descent, gift, or purchase, and manage, sell and convey the same to the same extent and in the same manner that the husband can property belonging to him. Neither husband nor wife shall be liable for the debts of the other contracted before marriage, nor for the separate debts of each other. Contracts may be made and liabilities incurred by a wife, and the same enforced against her, to the same extent and in the same manner as if she were unmarried; but she cannot enter into or carry on a partnership without the consent of her husband, unless he has abandoned her, or is idiotic or insane, or in the penitentiary. She may sue and be sued alone, as if she were unmarried. Neither he nor she can recover any compensation for any labor performed or services rendered for the other. Provisions are made for the protection and support of the wife in case of her abandonment by the husband. By another act, tenancy by the curtesy is abolished, and husband and wife are put on the same footing as to dower. Married woman may sue alone in regard to her separate property, and when the suit is between husband and wife; may be executrix if her husband file his consent. She may make a will. She attains majority at eighteen.

INDIANA.

In INDIANA, a married woman holds her real and personal property and all the income therefrom absolutely as her separate property, free from liability for the debts of the husband, but she cannot sell or encumber her real estate unless the husband join in the conveyance. She may dispose of her separate personal property as if unmarried; may carry on any trade or business, and her earnings and profits therein are her separate property; and may enter into any contract in reference to her separate personal estate or business, or the management and improvement of her separate real estate, and may sue or be sued thereon. The husband is not liable for debts contracted in her separate business. Curtesy and dower are abolished. As against creditors, widow takes five hundred dollars in goods or money, and one-third of real estate in fee, if it does not exceed ten thousand dollars, one-fourth if it does not exceed twenty thousand, and one-fifth if it exceeds that amount. As against relatives, she takes five hundred dollars in goods or money, and one-third of real and personal property if two or more children survive;

one-half if one child survive. If no children, but one of husband's parents survives, she takes the whole estate if under one thousand dollars, otherwise three-fourths. If neither children nor husband's parents survive she takes the whole. There are special provisions regarding second marriages. Married woman may make a will, and is eligible for certain public offices. A woman attains majority at twenty-one but may marry at sixteen.

IOWA.

In IOWA, a married woman owns in her own right all property, real or personal, which came to her by descent, gift, or purchase, and may manage, dispose of, and devise the same by will without the interference of her husband. Neither the husband nor wife is liable for the debts or contracts of the other, made or incurred before marriage or after. For all civil injuries by the wife, damages may be recovered from her alone. In case of abandonment of either by the other, the party abandoned may petition the court, who may, on sufficient proof of the facts, authorize the petitioner to manage or encumber the property of the abandoning party for the support of the family. Each may constitute the other his or her attorney in fact. She may sue for and recover wages for her personal services, and hold what she recovers as her own property. She may make contracts and incur liabilities in the same manner as if unmarried. The husband is not liable upon contracts relative to his wife's separate property or purporting to bind herself alone, nor is the property or income of either liable for the debts of the other. Family expenses, education of children, etc., are chargeable upon the property of both or either, and on such claims they may be sued jointly or separately. If both are sued jointly the wife may defend for her own right or for her husband's also. Neither husband nor wife can remove the other or their children from the homestead without his or her consent. A married woman may receive gifts or grants directly from her husband. Dower and curtesy are abolished. The survivor, whether husband or wife, has one-third in value of all real estate owned by the other at any time during the marriage, unless the right has been relinquished by a joint deed or the property sold on execution. She attains majority at eighteen or on marriage.

KANSAS.

In KANSAS, the property, real or personal, of a married woman, owned at the time of her marriage, or subsequently received, is her sole and separate property, not subject to the disposal of her husband, nor liable for his debts. She may sell and convey or enter into any contract relating thereunto, and may sue and be sued in the same manner and with like effect as a married man. She cannot bequeath more than half of her property away from her husband without his written consent. If either die intestate and without issue, all his or her property goes to the survivor. If a husband deprive his wife by will of more than half his property, she may elect to accept the conditions of his will, or take half of his property. Dower and curtesy are abolished. She may carry on trade, and her earnings are her separate property. She attains majority at 18.

KENTUCKY.

Marriage gives the husband no interest in the wife's property, real or personal, during her life. During the existence of the marriage relation she holds all her property for her separate and exclusive use, free from any debts, liability, or control of her husband. Her estate is not liable upon a contract after marriage, to answer for the debts or defaults of another, including her husband, unless such contract be in writing in the nature of a mortgage, but is liable for her own debts. She may acquire and hold property, real or personal, and may dispose of her personal property in her own name, as though unmarried. She may make contracts and sue and be sued as a single woman—except that she cannot make an executory contract to convey real estate unless her husband join. She may rent out her real estate and receive and recover the rents in her own name. A gift or transfer of personal property between husband and wife must be recorded like a chattel mortgage. Husband and wife may sell and convey her land and chattels real. If he abandon her without making sufficient provision for her support, or if he become insane, or be imprisoned for more than one year, she may be empowered to sell and convey her real estate freed from any claim by him. On the death of either husband or wife the survivor has a life estate in one-third of any real estate held by the other during coverture, unless the right has been barred or released, and an absolute estate in one-half of the personal property left by the deceased, after payment of debts. A married woman, twenty-one years of age, may dispose of her estate by will, subject to the rights of her husband as above stated.

LOUISIANA.

In LOUISIANA, a married woman is now competent to contract, and to bind and obligate herself personally and with reference to her separate and paraphernal property, and to appear in court and sue and be sued to the same extent and in same manner as though unmarried. She may make a will without her husband's authority. But she cannot become an executrix without his consent or the court's. She may act as a mandatory. Neither party can be a witness for or against the other. They may, by marriage contract, determine the rights of property, but cannot change the legal order of descents, nor derogate from the husband's rights over the person of his wife and children, or as head of the family, nor with respect to children if he survive the wife, nor from the prohibitory dispensation of the Code. The property of married persons is divided into "separate" and "common"; and the separate property of the wife into "dotal" and "extra-dotal," or "paraphernal." The "dotal" is that which the wife brings to the husband to assist him in bearing the expenses of the marriage establishment. Full provisions exist as to the settlement, administration, recovery, subject-matter, etc., of dowry, and the rights of both parties therein, and as to the administration, fruits, etc., of the extra-dotal effects. The wife has a legal mortgage on her husband's immovables, for the restitution of her dower, which he may release by giving a special mortgage to the satisfaction of a family meeting, etc., or in accordance with stipulations in the marriage

contract; but it shall not be lawful to stipulate that no mortgage shall exist. This mortgage must be recorded to avail against third persons. A partnership, or community, of acquests or gains exists by operation of law in all cases. But the parties may modify or limit it, or agree that it shall not exist; in which case there are provisions preserving to the wife the administration and enjoyment of her property, and the power of alienating it as if paraphernal, with reference to the expenses of the marriage and liability of the husband. This community consists of the profits of all the effects of which the husband has the administration and enjoyment, either of right or in fact, of the produce of the reciprocal industry and labor of both husband and wife, and of the estates which they may acquire during marriage, either by donations made jointly to them both, or by purchase, or in any similar way, even though the purchase be in the name of one, and not of both. Debts contracted during marriage enter into this partnership, and must be acquitted out of the common fund; but those contracted before marriage, out of individual effects. The husband is the head and master of the community, administers its effects, disposes of the revenue, and may alienate by an unencumbered title, without the wife's consent. There are special provisions as to conveyances and dispositions of the community property and gains; effect of dissolution of marriage; ability of the wife to exonerate herself from debts contracted during marriage by renouncing the partnership; effect of such renunciation; death; survivorship; separation *a mensa et thoro*; separation of property during coverture; rights of creditors, etc. Either party, by marriage contract or during marriage, may give to the other all he or she might give to a stranger. Property acquired in the State by non-resident married persons, whether the title is in the name of either or in their joint names, is subject to the same provisions as if owned by citizens of the State. If husband or wife die intestate, without ascendants or descendants, his or her share in the community property is held by the survivor in usufruct for life; if the deceased intestate leave issue of the marriage, the survivor holds such issue's inheritance in usufruct till death or second marriage. Wife may petition for separation of property when her husband's affairs are in such a state that her interests are in danger.

MAINE.

In MAINE, a married woman holds as her separate property whatever she possessed before marriage, and whatever comes to her after marriage, unless purchased by the husband's money or coming from him so as to defraud his creditors, and has all the usual rights of a single woman as to it, but cannot convey property received through the husband or his relatives unless he join. Her property alone is liable for her debts before marriage. Real estate may be conveyed to a wife by her husband as security for a *bona fide* debt, and this may be conveyed by her without his being joined in the deed. Letters of administration may be granted on her estate, and all debts contracted for her benefit shall be paid by her executor and allowed him. She may engage in trade on her own account, and any contract made by her is valid, and her property is liable to execution for her debts; his property is exempt in any such case unless he were a party to the contract. Her husband is not liable

for her torts. If he abandon her and leave the state without providing for her maintenance, or be confined in the state prison, she may be authorized by the court to make contracts binding on him as well as herself. Dower and curtesy are abolished. Survivor is entitled to one-third of real estate except wild lands, if there are children—to one-half if none—and the same as to lands owned during coverture, unless right has been released. Personal property aside from allowances to widow passes to the survivor in the same proportions. A woman over eighteen may marry without consent of parent or guardian.

MARYLAND.

In MARYLAND, the property of a married woman, real and personal, whether acquired before marriage or after, is her separate property, and not liable for the debts of the husband; but no conveyance made to her by her husband in fraud of creditors is valid. Her personal earnings and the income thereof belong to her. She may engage in any business, may form a partnership with her husband or other person, make contracts, and sue and be sued in all matters relating to her business or property as though unmarried. She may dispose of her property, real and personal, by deed, mortgage, lease, will, or other instrument, with the same powers that the husband has. She may release dower by a separate deed, or jointly with her husband. She may insure her husband's life and on his death may receive the amount of insurance free from any claim of his legal representatives or creditors. The husband is not liable for the wife's debts contracted before marriage. Wife has dower as at common law, and surviving husband has the same interest in wife's lands in lieu of curtesy.

MASSACHUSETTS.

The real and personal property of a woman on her marriage remains her separate property; and a married woman may receive, receipt for, hold, manage, and dispose of property, real and personal, as if she were sole, except that unless the husband joins in her deed, his statutory rights in her estate in case of her death, or curtesy, will subsist. She may make contracts as though she were sole, except with her husband. In the absence of express agreement, all work or labor performed by her is presumed to be on her separate account. Husband and wife cannot transfer property to one another, except that the wife may acquire by a gift from her husband as her separate property articles of personal use and adornment to a value of not more than two thousand dollars, provided such gift be not made in fraud of creditors. Conveyances of realty, except mortgages, may be made directly between husband and wife. A married woman may be an executrix, administratrix, guardian, or trustee. She may sue and be sued as though sole. When a married woman proposes to do business on her separate account, she shall record in the clerk's office of the town or city in which such business is to be carried on, a certificate setting forth her name and that of her husband, the nature of the business and the place where it is to be carried on. When the nature of the business or place of carrying it on is changed, a new certificate shall be filed. If she fails to record such certificates her husband

may do so. If such certificates be not recorded the property employed in the business is liable to be attached as the property of the husband, and the husband is liable for contracts made in carrying on the business. With these exceptions, the husband is not liable for contracts made by the wife in reference to her separate property or business, nor is her property liable to be taken on execution against him. If, however, she has property to the amount of two thousand dollars, she is jointly liable with him for debts due to the amount of one hundred dollars in each case, for necessities furnished with her knowledge or consent to herself and family.

The rights of husband and wife in each other's property on the decease of either are now by statute substantially the same. Widow may have dower as at common law, and husband may have curtesy consisting of the income of one-third of the wife's real estate for life, whether issue be born or not. Dower or curtesy must be claimed within one year, and if claimed excludes all other claims to the real estate of the deceased. In the case of intestacy, if dower or curtesy be not claimed, the survivor takes one-third of the real estate of the deceased in fee, if there be issue surviving, if none, then one-half; if no kindred, the whole. Survivor is entitled to one-third of the personal property of the deceased absolutely if there be surviving issue; if no issue, to \$5,000 and one-half of the excess; if no kindred, to the whole. If the personal property be less than \$5,000 enough real estate may be taken to make up the deficiency, and the remainder of the real estate only divided as above.

A married woman may make a will as though sole, but the husband may within one year waive the provisions of the will in his favor, and take the same share in her estate as though she had died intestate, except that if he would thus take more than \$10,000 he will receive only the income of the excess above that amount. The wife has the same rights in case the husband leaves a will; but the probate court may decree that the husband has been deserted by the wife or is living apart for justifiable cause, and thereafter the wife shall not be entitled to waive the provision of a will made by him.

MICHIGAN.

In MICHIGAN, all the real and personal estate of a married woman, whether acquired before marriage or after, is her separate property, free from liability for her husband's debts, and she may sell, convey, encumber, or otherwise dispose of the same as if sole, and she may bequeath the same by will. She may carry on business in her own name, and may make contracts binding her separate estate, but only in reference to her own property and business. She cannot bind her separate estate by becoming surety for her husband or other third person, except that she may make herself jointly liable with her husband on any written instrument, to the extent of her interest in real estate held by them jointly. She has the same right of dower as at common law, and may bar her right of dower by joining in her husband's deed. Tenancy by the curtesy is abolished. All contracts (except of marriage) may be made at twenty-one years. Marriage contracts can be made at sixteen.

MINNESOTA.

In MINNESOTA, all property, real or personal, owned by any married woman at her marriage, or received afterwards, is her own, as if unmarried, and is free from the control of her husband, and is not liable for his debts, but is liable for necessities furnished to the family. She may make any contract she could make if unmarried, and any transfer of her property, but, unless her husband joins in her deed, it will be subject to his statutory rights. Husband and wife must join in a deed of the homestead. Neither husband nor wife is liable for the debts or torts of the other, except that the husband is liable for necessities furnished to the wife as at common law. Either may be the agent of the other, or contract with the other, except as to the sale of real estate from one to the other. In case of desertion or divorce, or when the husband has been for one year insane, the wife may convey her real estate as if sole, but in the latter case approval of husband's guardian, if any, is required. A woman attains her majority at eighteen, but may join her husband in deeds of conveyance though under age. Dower and curtesy are abolished. Surviving husband or wife is entitled to the homestead of the deceased for life, or in fee if there be no children, free from debts, and to one-third of the remaining real estate in fee, free from any testamentary or other disposition not assented to in writing by the survivor, but subject to debts.

MISSISSIPPI.

In MISSISSIPPI, married women may acquire, hold, sell, bequeath, and in all other respects deal with their property, and may make all kinds of contracts free from any of the common law disabilities. Gifts and conveyances between husband and wife must, however, be in writing, acknowledged and recorded. Curtesy and dower are abolished. The surviving wife or husband takes an equal share with the children severally, and, where there is no surviving issue, takes the whole property in fee.

MISSOURI.

The real estate of a married woman and the income therefrom are not subject to the husband's debts, nor can he dispose of such estate unless she join with him in conveying it. But the annual products of her real estate are liable for necessities for the family and improvements on such estate. She may devise her real and personal estate, but not so as to affect his curtesy, and he cannot deprive her of her right to dower. All personal property acquired in any way by a married woman after March, 1875, is her separate property, free from her husband's debts, except for necessities for herself and family. She may sue and be sued in reference to such property without joining her husband. She may make contracts in her own name which will bind her separate property, real and personal. Her separate property, left to her by will before or after marriage, is not liable for her husband's debts. Females are of full age at eighteen years.

MONTANA.

In MONTANA, the property of a married woman, whether acquired before or after marriage, and her earnings and accumulations are her separate property, and are not liable for debts of the husband except for necessities for herself and children under eighteen years of age and for their education. A list of such property may be recorded with the county clerk and is *prima facie* evidence of her title. She may prosecute and defend suits, and may convey her separate property without consent of husband. Husband must support wife and family if able; if not, she must assist to the extent of her ability. Neither husband nor wife has any interest in the property of the other, and neither is answerable for the acts of the other. Either may enter into any transaction with the other or with any other person respecting property, as though unmarried. Widow has dower in one-third of all lands of which husband was seized during coverture. If he leave no issue she may elect in lieu of dower one-half of his real estate in fee, subject to payment of debts. Curtesy is abolished. A married woman may make a will, but cannot without husband's consent deprive him of more than two-thirds of her property, real and personal.

NEBRASKA.

In NEBRASKA, all the property, real or personal, of a married woman coming to her either before or after marriage, except by gift from her husband, and all the rents and profits thereof, are her sole and separate property, and may be managed by her alone, without interference by her husband, and they are not liable for his debts. She may convey or make any contract in reference to it that a married man may make as to his property; may sue and be sued, and carry on any business; and her earnings are her own. She may make a will; is not liable for her husband's debts; property of the husband is not liable for her debts. She must join with husband in conveyance or encumbrance of homestead. Women attain their majority at sixteen if married, otherwise at eighteen. Dower and curtesy are abolished.

NEVADA.

In NEVADA, all property of the wife, real or personal, held at marriage, or afterwards acquired by gift, bequest, devise, or descent, is her separate property; and all the husband's so held or acquired is his separate property. All property acquired otherwise by either party after marriage, is common property. She may manage and dispose of her separate property without his consent. During the marriage the husband has the exclusive control and management of the common property, and may sell and dispose of the same as his own, but any conveyance or mortgage of homestead must be executed by both husband and wife. At the death of either husband or wife all of the common property goes to the survivor. Dower and curtesy are abolished. If husband is unable to support himself and has no separate or common property wife must support him from her separate estate. The separate property of the wife is liable for her antenuptial debts, but his is not. Married women may carry on and transact business under their own names,

under certain regulations. Her earnings are not liable for her husband's debts. She has control and disposition of earnings of herself and minor children, if used for the family. She may sue and be sued alone if living separate. Women become of age at eighteen.

NEW HAMPSHIRE.

In NEW HAMPSHIRE, a married woman may hold real or personal estate, and convey, sell, devise, and bequeath the same as freely as if sole. She is entitled to the absolute control of her own earnings, and is not liable for the debts of the husband. She may make contracts in her own name, buy goods, give notes, and transact any business whatever as if sole, and bind her own property, in the course of such business, for her own benefit, and without the intervention of the husband; but she is not liable as surety for her husband, or in any undertaking in his behalf. He is not liable for her debts contracted before marriage. In case of desertion, or when the husband is a spendthrift, insane, or under guardianship, the wife has all the rights of a *feme sole*. A married woman may make a will. Either may convey real estate directly to the other. Dower and curtesy as at common law.

NEW JERSEY.

Property owned by a woman at the time of her marriage, or afterwards acquired by gift, grant, descent, devise, or bequest, with the income therefrom, including her paraphernalia—ornaments and wearing apparel given by her husband during coverture, is her separate property, not subject to the disposal of her husband, or liable for his debts. She may bind herself by contract in the same manner as though unmarried, and may sue and be sued on such contracts without her husband, but she cannot be an accommodation endorser or a surety, nor is she liable, on any promise, to answer for the debt or default of any other person. She cannot convey or encumber real estate without her husband; but a married woman having power to convey as executrix, administratrix, trustee, or guardian, may make a valid deed without husband's signature. If she is living in state of separation under a decree or without a decree, if there is no issue, she may convey certain interests in certain lands. Her separate property is not liable for debts contracted for the support of herself or family as her husband's agent, nor is she liable for family expenses, except by express contract in her own name. When a man refuses or neglects to support his wife, and she lives separate from him, she may, by order of court, sell, mortgage, or lease her lands, and may sue her husband in all matters relating to her separate property, as though unmarried. A married woman may make a will, but cannot defeat her husband's rights in her real estate. Dower and curtesy are abolished. Instead, each has a life estate in one-third of the other's lands.

NEW MEXICO.

All property owned by either husband or wife before marriage, or afterwards acquired by gift, bequest, devise, or descent, is his or her separate property and is not liable for the debts of the other contracted before

marriage. Her separate property is not liable for his debts after marriage, but is liable for her own. She may convey it without his consent. All other property acquired by either after marriage is community property. This is not liable for her contracts unless secured by mortgage or pledge executed by him. Husband has the management and control of community property with full power of disposition other than testamentary, except that he cannot make a gift of it, or sell or encumber the homestead or household furniture, or clothing of wife or children without her written consent. On the death of wife the whole community property belongs to husband. On the death of husband one half goes to wife; the other half is subject to his testamentary disposition, and if he make none goes, one fourth to the surviving wife, and one fourth to children if any, if none all to her. Husband and wife may contract with each other and with others as if unmarried. There is no dower or curtesy.

NEW YORK.

The real and personal property of any woman acquired before or after marriage remains her separate property, not liable for her husband's debts. Marriage contracts are allowed. She may carry on a trade or business on her separate account, may manage her property and business free from the control of her husband, and may dispose of her real or personal estate. Her bargains do not bind her husband. She may sue and be sued in regard to her person or separate property. By act of 1906 she may bring suit on torts without joining her husband. Transfers of real estate may be made directly between husband and wife, and they may contract with one another. Her husband is liable for her antenuptial debts to the extent of the assets received from her. A policy of insurance on the life of any one in her favor may with consent of the insured be assigned. She may hold patents for her inventions, and may vote on stock held by her. She may be a guardian, executrix, or administratrix, and may give the necessary bonds. She may make a will of personal property at sixteen; of real property at twenty-one. She may make a power of attorney as if single. Age of consent to marriage is eighteen.

NORTH CAROLINA.

All the property, real and personal, of a married woman, whether acquired before or after marriage, is her separate property, and is not liable for the debts or obligations of her husband. Marriage settlements are invalid as against creditors existing at the time of the making the same. Her husband is not liable for her debts, contracts, or wrongs, made or committed before marriage, but her liability for debts or damages contracted or incurred before marriage is not impaired by the marriage. She may contract and deal so as to affect her real and personal property with the same effect as though unmarried, but cannot convey her real estate without the written consent of her husband. She may sue in her own name without joining her husband to recover for personal services or injuries. She may make a will, provided she does not deprive her husband of his curtesy. She may insure his life for her benefit, if the premium does not exceed three hundred dollars. Females are of age at twenty-one.

NORTH DAKOTA.

A married woman may own in her own right real and personal property, and manage, sell, convey, and devise the same as freely as though unmarried. She may make contracts and sue and be sued thereon. Neither husband nor wife has any interest in the property of the other, or is answerable for the other's acts. Husband and wife may make contracts with each other respecting property as though unmarried. The earnings or separate property of the wife are not liable for the debts of the husband. Husband and wife are jointly liable for necessary supplies for family, and education of minor children. Women attain their majority at eighteen. Curtesy and dower are abolished.

OHIO.

All property, real or personal, belonging to a woman at her marriage, or afterwards acquired by conveyance, gift, devise, or inheritance, or by purchase with her separate money or means, or due as wages of her personal labor, or growing out of any violation of her personal rights, together with the income therefrom, is her separate property, is under her sole control, and not liable for any debts of her husband. She may sue and be sued in her own name, and may contract in the same manner and to the same extent as though unmarried. Husband and wife may contract with each other. A married woman whose husband deserts her, or neglects to provide for his family, may, in her own name, contract for the labor of herself and her minor children, and collect the earnings thereof, and may, by application to the court of common pleas, secure the care and control of minor children and the disposition of her real property. A married woman may make a will. Women attain their majority at the age of eighteen. The husband is not liable for the wife's contracts or torts. Curtesy is abolished, but the husband has a dower right in the wife's estate.

OKLAHOMA.

A married woman may own, manage, sell, convey, and devise property, real and personal, acquired by gift, descent, or purchase, and make contracts and incur liabilities, in the same manner as if unmarried. Neither husband or wife has any interest in the property of the other, but neither can be excluded from the other's dwelling. Husband and wife may contract with each other, or with others, respecting property, subject as between themselves to the rules of law as to persons in confidential relations. Neither is answerable for the acts of the other. Earnings of wife and of minor children living with her, while she is living separate from her husband, are her separate property. The separate property of wife is not liable for debts of husband, but is liable for her own debts contracted before or after marriage, except for those contracted for the support of herself, her children, or family as her husband's agent. She may buy and sell goods, give notes or other obligations, and sue and be sued, as if unmarried. Women attain their majority at eighteen. Dower and curtesy are abolished.

OREGON.

The property of a married woman, whether acquired before marriage or after, is her separate property, and is not liable for the debts of the husband. She may manage, sell, convey, or devise the same by will, to the same extent and in the same manner that her husband can property belonging to him. Husband and wife may convey property to one another. Property of both is liable for expenses of family and education of children. Neither is liable for the contracts of the other. By special statute all civil disabilities which are not imposed upon the husband are removed from the wife, and she now has the right to vote and to hold office. Women attain their majority at eighteen, or on marriage. Widow is entitled as dower to use for life of one half of lands owned by husband at any time during marriage unless lawfully barred. Husband's rights of curtesy in wife's lands are the same. She may devise lands by will but subject to husband's rights by curtesy.

PENNSYLVANIA.

The disabilities of married women as to acquisition, control, and disposition of property, and the right to make contracts, have been substantially removed. Every married woman has the right to acquire, hold, control, and dispose of her property, real and personal, in the same manner as though unmarried, except that she cannot mortgage, lease, or convey real estate unless her husband joins in the conveyance. Her deed or lease must be separately acknowledged.

Property of every kind owned, acquired, or earned by her before or after marriage belongs to her and not to her husband or his creditors. She may make any contract relating to any business in which she may engage, or for necessities, or in relation to her separate estate, and may sue or be sued thereon, or for torts done to or committed by her, in the same manner and with the same effect as though unmarried, and any recovery by or against her will affect only her separate estate, but she cannot become accommodation endorser, guarantor, or surety for another. She may make assignments, transfers, and sales of her separate personal property of every kind without her husband joining. She may dispose of her property, real and personal, by will signed by her as though unmarried. Widow takes for life one-third (or if no issue living, one-half) of all real estate owned by husband at his decease, and dower in all owned by him at any time during marriage, unless she has released it, or the land has been sold under execution. Husband has wife's lands for life whether there be issue or not.

THE PHILIPPINES.

The respective rights of husband and wife in relation to property are still in most respects governed by the provisions of the Spanish Civil Code. They may by marriage contract before marriage stipulate the conditions for conjugal partnership with regard to present and future property; otherwise their rights will be governed by the legal system of conjugal partnership. The separate property of each consists of that brought to the marriage as his or her own; that acquired for a good consideration by either during the

marriage; that acquired by right of redemption or by exchange for property belonging to either; and that bought with money belonging exclusively to either. To the conjugal partnership belong property acquired by valuable consideration during marriage at the expense of partnership property, whether made for the partnership or for one of the spouses only; that obtained by the industry, salaries, or work of the spouses or either of them; the fruits, income and interest during the marriage from partnership property or that belonging to either of the spouses. The wife has the management of her separate property, but she cannot alienate, encumber, or mortgage it without his permission. The husband is the administrator of the conjugal partnership. He may alienate or encumber the conjugal property for valuable consideration without her consent, and can dispose by will of his half. She cannot bind the conjugal property except for daily expenses of the family. He is the administrator of the wife's dowry. He must be joined in all actions by or against her, except in actions concerning her separate property, or in suits between them, or when for just cause she is living apart from him. Gifts by one to the other during marriage, with some trifling exceptions, are void. She may make a will and act as executrix and administratrix. Women are eligible as members of school boards.

PORTO RICO.

All property, real and personal, belonging to either husband or wife at the time of marriage, and all subsequently acquired by either by gift, devise or descent, or by exchange for separate property, or purchased with money belonging to either husband or wife, is separate property. All other property acquired during the marriage, including the income of property formerly acquired, is community property. The wife may manage and dispose of her separate property and contract in reference to the same. She may sue and be sued apart from her husband in suits relating to her separate property and rights; in other cases he must be joined. The husband has the control and management of the community property during the marriage, but the wife must join in any alienation of real estate. He cannot dispose by will of more than one-half of the community property, and on the decease of either husband or wife one-half goes to the survivor. The property conditions of the conjugal partnership may be controlled by marriage contract. In marriage where the husband is a Porto Rican the laws of Porto Rico relating to conjugal partnership in property prevail; otherwise the laws of the husband's country are binding. Ante-nuptial gifts are valid, but those between the spouses after marriage, with some trifling exceptions are void. Parents are required to give dowry to daughters, the proportionate amount of which is regulated by law.

RHODE ISLAND.

The property of a married woman, whether acquired before or after marriage, including that acquired by her own industry, together with the income from the same, is not liable for her husband's debts, and remains her sole and separate property and may be disposed of by her as though she was unmarried, subject, however, to his curtesy in her real estate. She may make

contracts of all kinds as though unmarried. She may dispose of her property by will, but not so as to impair her husband's curtesy. Her separate property is not liable for the expenses of the family, or for the support of herself or children, except by her written order; property held for her benefit under express trusts may be subject to her contracts by her express written order. Husband and wife may convey property to one another when not in fraud of creditors. A married woman coming from another State whose husband has never lived with her in the State, after a year's continuous residence may transact business, make contracts, dispose of property acquired by her, and have the custody of her minor children. A married or unmarried woman is of age at twenty-one.

SOUTH CAROLINA.

By the constitution of SOUTH CAROLINA, adopted in 1895, "the real and personal property of a woman held at the time of her marriage, or that which she may thereafter acquire by gift, grant, inheritance, devise, or otherwise, shall be her separate property, and she shall have all the rights incident to the same to which an unmarried man or woman is entitled. She shall have the power to contract and be contracted with in the same manner as if she were unmarried." She is not bound to support her family if her husband be alive, and her separate property is not bound by the contracts of her husband without her consent. Her earnings and income are a part of her separate estate. Tenancy by the curtesy is abolished.

SOUTH DAKOTA.

A married woman may own in her own right real and personal property, and manage, sell, convey, and devise the same as freely as though unmarried. She may make contracts and sue or be sued thereon. Neither husband nor wife has any interest in the property of the other, or is answerable for the other's acts. Husband and wife may make contracts with each other respecting property as though unmarried. They are jointly and severally liable for necessities consisting of food, clothing and fuel purchased for the family. The earnings or separate property of the wife are not liable for the debts of the husband. Women attain their majority at eighteen. Curtesy and dower are abolished.

TENNESSEE.

Married women are now fully emancipated from all disability on account of coverture, and the common law as to the disabilities of married women and its effect on the rights of property of the wife is totally abrogated. Marriage does not impose any disability or incapacity on a woman as to the ownership, acquisition or disposition of property of any sort, or as to her capacity to make contracts and do all acts in reference to property which she could lawfully do if she were not married; and every woman now married or hereafter to be married has the same capacity to acquire, hold, manage, control, use, enjoy and dispose of, all property, real and personal, in possession, and to make any contract in reference to it, and to bind her-

self personally, and to sue and be sued with all the rights and incidents thereof, as if she were not married. She is not liable for debts contracted for the support or expenses of herself and family unless she expressly contracts to be so. Any insurance of the husband's life goes to his wife and children free from his debts. She may dispose of her property, real and personal, by will, but not so as to deprive her husband of his curtesy.

TEXAS.

The marriage of a female minor gives her all the rights she would have if of age. All property acquired by either party before marriage, or by gift, devise, or descent afterwards, is the separate property of each. Property acquired by either during marriage in other ways is common; the husband only may dispose of it during coverture. If there are no children the whole goes to the survivor, otherwise one-half. The wife has sole management and control of her separate property and of her personal earnings, rents from real estate, interest on bonds and notes and dividends on stock, and they are not subject to the husband's debts, but he must join in conveyances of real estate and transfer of her stocks and bonds. If he refuse to join she may obtain leave of court to act alone. Neither his separate property nor the community property, except as above, is subject to her debts, except for necessities for her or her children. Marriage agreements must be made before a notary, and may be acknowledged by a minor, with the parent's or guardian's consent, and are unalterable after marriage. A reservation of property therein to be good must be recorded. On the death of either the survivor takes the common property, subject to its debts, nor is it necessary for the husband to administer on such property on her death, as he has the same control of it then that he had in her lifetime. In case of his death she has the same control till she marries, when it will be subject to administration. Dower is abolished. Husband may be compelled to give bonds for the proper management of the common property. A married woman cannot contract as a partner in business or embark her separate means in trade, nor can she join in note or be surety on bond without her husband.

UTAH.

All property owned by either husband or wife, whether acquired before or after marriage, is separate property and may be held and disposed of without limitation or restriction by reason of coverture. A married woman may carry on business with her separate property, and her notes and contracts in reference to such business are binding on her. She may make a will, as if sole. Dower and curtesy are abolished. Majority at age of eighteen.

VERMONT.

The real estate of a married woman, and the rents, issues, and products thereof, and, during coverture, her husband's interest in the same, cannot be levied upon for the sole debts of her husband, except that the annual products may be taken for debts created for necessities for his wife and family, or for labor or materials furnished upon, or for cultivation or improvement

of such real estate. A married woman's separate property, whether acquired before or after marriage, is not liable for her husband's debts, or for debts contracted for the support of herself and children. All personal property acquired by a married woman during coverture by inheritance or distribution is held to her sole and separate use. Her earnings are not subject to attachment by trustee process for her husband's debts. The husband must join in conveyance of her real estate. Dower is allowed only in real estate of which the husband died seized. She may make contracts with any person except her husband, and her separate estate is liable therefor. Females become of age at eighteen. A married woman may dispose of her property, real and personal, by will. A married woman may be guardian, executrix, administratrix, or trustee.

VIRGINIA.

All real and personal estate to which any woman is entitled at the time of her marriage, or which she may subsequently acquire, is her separate estate, not subject to the use, control, or disposal of her husband, or to liability for his debts. She may manage and dispose of her property as if sole, except that she cannot deprive her husband of his right to curtesy in her real estate. She may engage in trade and carry on business as if unmarried, and the proceeds of her labor and earnings of her business are her separate property. She may make contracts and sue and be sued thereon as though unmarried, and any judgment against her may be enforced against her separate estate. Her contracts in reference to her separate estate, business, or labor are not binding upon her husband or his estate, and when married after March 31, 1875, he is not liable for her antenuptial debts. Every contract made by a married woman is presumed to be with reference to her separate estate and binding thereon. If husband wilfully abandons or deserts his wife, and such abandonment or desertion continues until her death, he loses all rights in her separate estate.

WASHINGTON.

All property, real and personal, owned by the husband or wife before marriage, and that acquired afterwards by gift, devise, or descent, is separate property. All property acquired during marriage, except by gift, devise, or descent, is their common property. The husband has the management and control of the community property and may dispose of the personal property, but cannot sell or encumber the real estate unless the wife joins. They may convey their respective interests in common property directly to each other. A married woman may contract, and sue and be sued, as though unmarried. All laws imposing civil disabilities on the wife which are not imposed also upon the husband are abolished. The rights of both parents to the care and custody of children are equal. Dower and curtesy are abolished. A woman is of full age at the age of eighteen.

WEST VIRGINIA.

In WEST VIRGINIA, the real and personal property of a married woman acquired from any person other than her husband is secured to her separate

use, free from the control or debts of her husband. And her earnings, and the real and personal property purchased with the proceeds thereof, remain her separate property free from his control or debts. If living separate and apart from her husband, she may convey her property, otherwise (if the property be real estate), her husband must join in the deed. She may insure her husband's life for her own benefit, provided the premium does not exceed one hundred and fifty dollars. She may hold and enjoy patents for her inventions; may make deposits in the bank; may hold stock in corporations (other than mutual fire insurance companies), and vote on the same. Her husband is liable for her debts contracted before marriage only to the extent of the property received by him through her. She may sue and be sued alone in regard to her separate estate. If living apart from her husband she may carry on business in her own name, and the capital and profits of such business are her separate property.

WISCONSIN.

The real and personal property of the wife at the time of marriage, and the income thereof, and any which she may receive by inheritance, gift, grant, devise, or bequest from any person other than her husband, is her separate property, not subject to the disposal of the husband, or liable for his debts. She may convey her property, real or personal, as if unmarried, and her husband need not join in her deed, but will, notwithstanding, be barred of any right of curtesy. A deed or mortgage of the homestead is void without her signature. The wife's individual earnings are her separate property. A policy of insurance for the benefit of a married woman inures to her sole and separate use and that of her children. Her separate estate is liable for debts contracted by her on its credit, but is not liable for family expenses except by express contract. She may dispose of her separate estate in all respects as an unmarried woman, and may deal with her husband in reference to such estate in the same manner as with a stranger. Women become of age at twenty-one, but may make a will and bar dower at eighteen.

WYOMING.

The rights of a married woman in respect to her property are substantially the same as though she were unmarried. She may make a will, sue and be sued, make contracts, carry on business, retain her own earnings, hold and convey property, real and personal, free from the control or interference of her husband, and from liability for his debts. Husband and wife are jointly and severally liable for necessary family expenses and education of children. She may hold office and vote at election. She may be executrix of a will, but cannot be appointed administratrix. Dower and curtesy are abolished.

CANADA.

In the provinces of the Dominion, generally, a married woman holds all her property and earnings free from the control of her husband. Her separate property is liable for her debts before marriage, and her husband is not. She may manage it and bequeath it. She is entitled to dower, but

there is no tenancy by curtesy. In the Province of Quebec the law is modified by the French law. There all the personal property and gains of both parties are put together and form the community property, which the husband administers. Each can bequeath only his or her interest, and the heirs of each inherit the interest of the other.

CHAPTER V.

AGREEMENT AND ASSENT.

SECTION I.

THE LEGAL MEANING OF AGREEMENT.

No CONTRACT which the law will recognize and enforce exists, until the parties to it have agreed upon the same thing, in the same sense. Thus, in a case where the defendants by letter offered to the plaintiffs a certain quantity of "good" barley, at a certain price. Plaintiffs replied: "We accept your offer, expecting you will give us fine barley and full weight." The jury found that there was a distinction in the trade between the words "good" and "fine," and the court held that there was not a sufficient acceptance to sustain an action for non-delivery of the barley. So where a person sent an order to a merchant for a particular quantity of goods on certain terms of credit, and the merchant sent a less quantity of goods, and at a shorter credit, and the goods were lost by the way, it was held by the court that the merchant must bear the loss, for there was no sale or contract between the parties.

There is an apparent exception to this rule, when, for example, A declares that he was not understood by B, or did not understand B, in a certain transaction, and that there is therefore no bargain between them; and B replies by showing that the language used on both sides was explicit and unequivocal, and constituted a distinct contract. Here, B would prevail. The reason is, that the law presumes that every person means that which he distinctly says. If A had offered to sell B his horse for twenty dollars, and received the money, and then tendered to B his cow,

on the ground that he was thinking only of his *cow*, and used the word *horse* by mistake, this would not avoid his obligation, unless he could show that the mistake was known to B; and then the bargain would be fraudulent on B's part. This would be an extreme case; but difficult questions of this sort often arise. If A had agreed to sell, and had actually delivered, a cargo of shingles at "3.25," supposing that he was to receive that price for a "bunch," which contains five hundred, and B supposed that he had bought them at that price for a "thousand," which view should prevail? The answer would be, first, that if there was, honestly and actually, a mutual mistake, there was no contract, and the shingles should be returned. But, secondly, if a jury should be satisfied, from the words used, from the usage prevailing where the bargain was made and known to the parties, or from other circumstances attending the bargain, that B knew that A was expecting that price for a bunch, B would have to pay it; and if they were satisfied that A knew that B supposed himself to be buying the shingles by the thousand, then A could not reclaim the shingles, nor recover more than that price. There was such a case so decided.

In construing a contract, the actual and honest intention of the parties is always regarded as an important guide. But it must be their intention as expressed in the contract.

If the parties, or either of them, show that a bargain was honestly but mistakenly made, which was materially different from that intended to be made, it would be a good ground for declaring that there was no contract.

Mistakes of fact in a contract can be corrected by the courts, but not mistakes of law; no man being permitted to take advantage of a mistake of the law, either to enforce a right, or avoid an obligation; for it would be obviously dangerous and unwise to encourage ignorance of the law by permitting a party to profit, or to escape, by his ignorance. But the law which one is required at his peril to know, is the law of his own country. Ignorance of the law of a foreign state is ignorance of fact. In this respect the several States of the Union are foreign to each other. Hence, money paid through ignorance or mistake of the law of another State may be recovered back.

Fraud annuls all obligation and all contracts into which it enters, and the law relieves the party defrauded. If both of the

parties act fraudulently, neither can take advantage of the fraud of the other; and if one acts fraudulently, he cannot set his own fraud aside for his own benefit. Thus, if one gives a fraudulent bill of sale of property, for the purpose of defrauding his creditors, *he* cannot set that bill aside and annul that sale, although those who are injured by it may.

SECTION II.

WHAT IS AN ASSENT?

The most important application of the rule stated at the beginning of this chapter, is the requirement that an acceptance of a proposition must be a simple and direct affirmative, in order to constitute a contract. For if the party receiving the proposition or offer accepts it on any condition, or with any change of its terms or provisions, which is not altogether immaterial, it is no contract until the party making the offer consents to those modifications.

Therefore, if a party offers to buy certain goods at a certain price, and directs how the goods shall be sent to him, and the owner accepts the offer and sends the goods as directed, and they are lost on the way, it is the buyer's loss, because the goods were his by the sale, which was completed when the offer was accepted. But if the owner accepts the offer, and in his acceptance makes any material modification of its terms, and then sends the goods, and they are lost, it is his loss now, because the contract of sale was not completed.

Nor will a voluntary compliance with the conditions and terms of a proposed contract always make it a contract obligatory on the other party, unless there has been an accession to, or an acceptance of, the proposition itself. In general, if A says to B, if you will do this, I will do that; and B instantly does what was proposed to him, this doing so is an acceptance, and A is bound. But if the doing of the thing may be something else than an acceptance of the offer, or if the thing may be done for some other reason than to signify an acceptance or assent, there must be express acceptance also, or there is no bargain.

SECTION III.

OFFERS MADE ON TIME.

It sometimes happens that one party makes another a certain offer, and gives him a certain time in which he may accept it. The law on this subject was once somewhat uncertain, but may now be considered as settled. It is this: If A makes an offer to B, which B at once accepts, there is a bargain. But it is not necessary that the acceptance should follow the offer instantaneously. B may take time to consider, and although A may expressly withdraw his offer at any time before acceptance, yet if he does not do so, B may accept within a reasonable time; and if this is done, A cannot say: "I have changed my mind." What is a reasonable time must depend upon the circumstances of each case. If A when he makes the offer says to B that he may have a certain time wherein to accept it, and is paid by B for thus giving him time, he cannot withdraw the offer; or if he withdraws it, for this breach of his contract the other party, B, may have his action for damages. If A is not paid for giving the time, A may then withdraw the offer at once, or whenever he pleases, provided B has not previously accepted it. But if B has accepted the offer before the time which was given expired, and before the offer was withdrawn, then A is bound, although he gave the time voluntarily and without consideration. For his offer is to be regarded as a continuing offer during all the time given, unless it be withdrawn. A railroad company asked for the terms of certain land they thought they might wish to buy. The owner said in a letter, they might have it at a certain price, if they took it within thirty days. After some twenty-five days the railroad company wrote accepting the offer. The owner says, No, I have altered my mind; the land is worth more; and I have a right to withdraw my offer, because you paid me nothing for the time of thirty days allowed you. But the court held that he was bound, because this was an offer continued through the thirty days, unless withdrawn. They said that the writing when made was without consideration, and did not therefore form a contract. It was then but an offer to contract, and the party making the offer most undoubtedly might have withdrawn it at any time before acceptance. But when the offer was accepted, the minds of the parties

met, and the contract was complete, and no withdrawal could then be made.

SECTION IV.

A BARGAIN BY CORRESPONDENCE.

When a contract is made by correspondence, the question occurs, At what time, or by what act, is the contract completed? The law as now settled in this country may be stated thus. If A writes to B proposing to him a contract, this is a continued proposition or offer of A until it reaches B, and for such time afterwards as would give B a reasonable opportunity of accepting it. It may be withdrawn by A at any time before acceptance; but is not withdrawn in law until a notice of withdrawal reaches B. This is the important point. Thus if A, in Boston, writes to B, in New Orleans, offering him a certain price for one hundred bales of cotton; and the next day alters his mind, and writes to B, withdrawing his offer; if the first letter reaches B *before* the second reaches him, although *after* it was written and mailed, B has a right to accept the offer *before* he gets the letter withdrawing it, and by his acceptance he binds A. But if B delays his acceptance until the second letter reaches him, the offer is then effectually withdrawn. It is a sufficient acceptance if B writes to A declaring his acceptance, and puts his letter into the post-office. It seems now quite clear, that as soon as the letter leaves the post-office, or is beyond the reach of the writer, the acceptance is complete. Suppose on the 5th of May, A in Boston writes to B in New Orleans, offering to buy certain goods there at a certain price. On the 8th of May, A writes that he has altered his mind and cannot give so much, and mails the letter. On the 14th of May, B in New Orleans receives the first letter, and the next day, the 15th, answers it, saying that he accepts the offer, and mails his letter. On the 17th he receives the second letter of A withdrawing the offer. Nevertheless the bargain is complete and the goods are sold. But if B had kept his letter of acceptance by him until he had received A's letter of withdrawal, he could not then have put his letter into the mail and bound A by his acceptance.

The party making the offer by letter is not bound to use the same means for withdrawing it which he uses for making it;

because any withdrawal, however made, terminates the offer, if only it reaches the other party before his acceptance. Thus, if A in the case just supposed, a week after he has sent his offer by letter, telegraphs a withdrawal to B, and this withdrawal reaches him before he accepts the offer, this withdrawal would be effectual. So if he sent his offer by letter to England in a sailing ship, and a fortnight after sent a revocation in a steamer, or by telegraph, if this last arrived before the first arrival and was accepted, it would be an effectual revocation.

SECTION V.

WHAT EVIDENCE MAY BE RECEIVED IN REFERENCE TO A WRITTEN CONTRACT.

If an agreement upon which a party relies be oral only, it must be proved by evidence. But if the contract be reduced to writing, it proves itself; and now no evidence whatever is receivable for the purpose of varying the contract or affecting its obligations. The reasons are obvious. The law prefers written to oral evidence, from its greater precision and certainty, and because it is less open to fraud. And where parties have closed a negotiation and reduced the result to writing, it is presumed that they have written all they intended to agree to, and therefore, that what is omitted was finally rejected by them.

But some evidence may always be necessary, and therefore admissible; as, evidence of the identity of the parties to the contract, or of the things which form its subject-matter. Quite often, neither the court nor the jury can know what person, or what thing, or what land, a contract relates to, unless the parties agree in stating this, or evidence shows it. The rule on this subject is, that, while no evidence is receivable to *contradict* or *vary* a written contract, evidence may be received to explain its meaning, and show what the contract is in fact.

There are some obvious inferences from this rule. The first is, that, as evidence is admissible only to explain the contract, if the contract needs no explanation, that is, if it be by itself perfectly explicit and unambiguous, evidence is inadmissible, because it is wholly unnecessary unless it is offered to vary the meaning and force of the contract, and that is not permitted. Another, following from this, is, that if the evidence purports,

under the name of explanation, to give to the contract a meaning which its words do not fairly bear, this is not permitted, because such evidence would in fact make a new contract.

A frequent use of oral evidence is to explain, by means of persons experienced in the particular subject of the contract, the meaning of technical or peculiar words and phrases; and such witnesses are called Experts, and are very freely admitted.

It may be remarked, too, that a written receipt for money is not within the general rule as to written contracts, being always open, not only to explanation, but even to contradiction, by extrinsic evidence. And this is true of the *receipt part* of any instrument. If a written instrument not only recites or acknowledges the receiving of money or goods, but contains also a contract or grant, such instrument, as to the contract or grant, is no more to be affected by any evidence than if it contained no receipt; but as to the receipt itself, it may be varied or contradicted in the same manner as if the instrument contained nothing else. Thus, if a deed recites that it was made in "consideration of ten thousand dollars, the receipt whereof is hereby acknowledged," the grantor may sue for the money, or any part of it, and prove that the amount was not paid; for this affects only the *receipt part* of the deed. But he cannot say that the grant of the land was void because he never had his money, nor that any agreement the deed contained was valid for such a reason; because, if he proved that the money was not paid for the purpose of thus annulling his grant or agreement, he would be offering evidence to affect the *other part* of the deed; and that he cannot do.

A legal inference from a written promise can no more be rebutted by evidence than if it were written. Thus, if A, by his note, promises to pay B a sum of money in sixty days, he cannot when called upon resist the claim by proving that B, when the note was made, agreed to wait ninety days; and if A promised in writing to pay money, and no time is set, this is by force of law a promise to pay on demand, and evidence is not receivable to show that a distant period was agreed upon.

Generally speaking, all written instruments are construed and interpreted by the law according to the simple, customary, and natural meaning of the words used.

It should be added, that when a contract is so obscure or uncertain that it must be set wholly aside, and regarded as no contract whatever, it can have no force or effect upon the rights or obligations of the parties, but all of these are the same as if they had not made the contract.

SECTION VI.

CUSTOM, OR USAGE.

A custom, or usage, which may be regarded as appropriate to a contract, has often great weight in reference to it. This it may have, first, as to the construction or meaning of its words; and next, as to the intention or understanding of the parties.

The ground and reason for this influence of a custom is this. If it exists so widely and uniformly among such persons as make the contract, and for so long a time, that every one of them must be considered as knowing it, and acting with reference to it, then it ought to have the same force as if both parties expressly adopted it; because each party has a right to think that the other acted upon it.

Sometimes this is carried very far. In one English case, a man had agreed to leave in a certain rabbit warren *ten thousand rabbits*, and the other party was permitted to prove that, by the usage of that trade, a thousand meant one hundred dozen, or *twelve hundred*. In an American case, a man agreed to pay a carpenter twelve shillings a day for every man employed by him about a certain building; the carpenter was permitted to prove that, by the usage of that trade, "a day" meant ten hours' work; and as his men had worked twelve and a half, he was permitted to charge fifteen shillings, or for one and one-fourth days' work, for every day so spent.

In these cases the custom affected the meaning of the words. But it also has the effect of words; as if a merchant employed a broker to sell his ship, and nothing was said about terms, and the broker did something about it, and the ship was sold, if the broker could prove a universal and well-established custom of that place, that for doing what he did under the employment he was entitled to full commissions, he would have them, as much as if they were expressly promised.

Any custom will be regarded by the court, which comes within the *reason* of the rule that makes a custom a part of the contract. It comes within the reason only when it is *so far* established, and *so well* known to the parties, that it must be supposed that their contract was made with reference to it. For this purpose, the custom must be established and not casual, uniform and not varying, general and not personal, and known to all the parties. But the degree in which these characteristics must belong to the custom will depend in each case upon its peculiar circumstances. Let us suppose a contract for the making of an article which has not been made until within a dozen years, and only by a dozen persons. Words are used in this contract of which the meaning is to be ascertained; and it is proved that these words have been used and understood in reference to this article, always, by all who have ever made it, in one way. Then this custom will be permitted to explain and interpret the words of the parties. But if the article had been made a hundred years or more, in many countries and by multitudes of persons, the evidence of this use of these words by a dozen persons in a dozen years would not be sufficient to give to this practice the force of *custom*.

Other facts must be considered; as, how far the meaning sought to be put on the words by custom varies from their common meaning in the dictionary, or from general use; and whether other makers of the article use these words in various senses, or use other words to express the alleged meaning. Because the *main question* is always this: Can it be said that both parties *must* have used, or *ought* to have used, these words in this sense, and that each party had good reason to believe that the other party so used them? Thus when the brief but violent "*Morus multicaulis*" (or mulberry) speculation prevailed, a few years ago, a man made a contract to sell and deliver a certain number of the trees "a foot high"; and the buyer was permitted to prove that, by the usage and custom of all who dealt in that article, the length was measured to the top of the ripe wood only, rejecting the green and immature top; and the "foot high" was to be so understood.

No custom, however, can be proved or permitted to influence the construction of a contract, or vary the rights of the parties, if the custom itself be illegal. For this would be to permit, or

even oblige, parties to break the law, because others had broken it.

Nor would the courts sanction a custom which was in itself unreasonable and oppressive. There was a vessel cast ashore on the coast of Virginia, and the master sold the cargo on the spot; and on trial the jury found that he was authorized to do so by the usage there; but the Supreme Court of Massachusetts, where the ship and cargo were insured, said that the usage was unreasonable, and they would not allow it. The Supreme Court of Pennsylvania in one case refused to allow a usage, as unreasonable, by which plasterers charged half the size of the windows at the price per square yard agreed on for the plastering of a house.

Lastly, no custom, however universal, or old, or known (unless it has actually become a law), has any force whatever, if the parties see fit to exclude and refuse it by words of their contract, or provide that the thing which the custom affects shall be done in a way different from the custom. For a custom can never be set up against either the express agreement or the clear intentions of the parties.

I will now give forms for various agreements or contracts:

FORMS OF CONTRACTS OR AGREEMENTS.

Every agreement should be written, and signed by both parties, and witnessed, where this can be done; although the law absolutely requires witnesses in very few cases, and in none of mere contract. It is prudent, however, to have them, for it is a rule of law, that things which cannot be proved and things which do not exist are the same in the law.

Everything agreed upon should be written out distinctly, and care should be taken to say all that is meant, and just what is meant, and nothing else; for it is a rule of law, that no *oral* testimony shall control a *written agreement*, unless fraud can be proved. Against fraud nothing stands.

In contracts, deeds and other written instruments it is common to add after the name and residence of each of the parties a statement of his business or profession. This is not essential and it is often omitted, its object being only to aid in the identification of the parties. For this purpose it is frequently useful,

especially where there are several persons of the same name. We, therefore, recommend its use.

Seals are not necessary in a simple contract, but, as shown in the next chapter, there is sometimes a technical advantage in their use, and therefore in important contracts it is best to use them.

(2.)

A General Agreement, Sufficient for Many Purposes.**MUTUAL AGREEMENT OF TWO.**

A. B. of *(city or town, county and state of residence, and business or profession)*, and C. D. of *(as before)*, have agreed together, at *(place)*, on *(the day should always be named)*, and do hereby promise and agree to and with each other, as follows: A. B., in consideration of the promises hereinafter made by C. D. *(if there are any such promises)*, and of *(here state any other consideration which A. B. has)*, promises and agrees to and with C. D., that *(here set forth, as above directed, the whole of what A. B. undertakes to do.)*

And C. D. in consideration *(set forth consideration and promise as before.)*
Witness our hands, to two copies of this agreement interchangeably.

A. B.
C. D.

Signed and Interchanged in Presence of

E. F.
G. H.

(3.)

Another Form of General Agreement.

This Memorandum of Agreement made this _____ day of _____ 19____, by and between _____ of _____, party of the first part, and _____ of _____, party of the second part, witnesseth that;

Whereas *(here may be inserted a statement of such facts leading up to the making of the contract as may show the situation of the parties and the subject-matter of the contract)*.

Now therefore in consideration of the premises, and of one dollar by each of said parties to the other paid, the receipt of which is hereby acknowledged, and also of the respective covenants and agreements of the said parties hereinafter contained, the said parties for themselves and their legal representatives hereby mutually covenant and agree each with the other as follows, viz:

The party of the first part hereby covenants and agrees *(here insert all that the party of the first part is to do)*.

And the party of the second part hereby covenants and agrees *(here insert what he agrees to do)*.

In Witness Whereof, The said parties have hereunto and to a duplicate hereof, set their hands and seals the day and year first above written.

(Signatures.) (Seals.)

Signed, Sealed, and Delivered in presence of

(4.)

A General Agreement, With Forfeiture Clause.

Articles of Agreement, Made this _____ day of _____ in the year of our Lord one thousand nine hundred and _____ between _____ party of the first part, and _____ party of the second part,

Witness, That the said party of the first part hereby covenants and agrees, that if the party of the second part shall first make the payments and perform the covenants hereinafter mentioned on his part to be made and performed, the said party of the first part will, etc.

And the said party of the second part hereby covenants and agrees to pay to said party of the first part the sum of _____ dollars, in the manner following: _____ dollars cash in hand paid, the receipt whereof is hereby acknowledged, and the balance _____ with interest at the rate of _____ per centum per annum, payable _____ annually. And in case of the failure of the said party of the second part to make either of the payments, or perform any of the covenants on his part hereby made and entered into, this contract shall, at the option of the party of the first part, be forfeited and determined, and the party of the second part shall forfeit all payments made by him on this contract, and such payments shall be retained by the said party of the first part in full satisfaction and in liquidation of all damages by him sustained, and he shall have the right to (*Here insert any other stipulations*).

It is mutually agreed that all the covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators and assigns of the respective parties.

In Witness Whereof, The parties to these presents have hereunto set their hands and seals, the day and year first above written.

(Signatures.) (Seals.)

Signed, Sealed, and Delivered in presence of

(5.)

General Contract for Mechanics' Work.

Contract made this _____ day of _____ A. D. 19____, by and between _____ of _____, of the first part, and _____ of _____, of the second part,

Witnesseth, That the party of the first part, for the consideration hereinafter mentioned, covenants and agrees with the party of the second part to perform in a faithful and workmanlike manner the following specified work, viz.: _____

And in addition to the above to become responsible for all materials delivered and receipted for, the work to be commenced _____ and to be completed and delivered free from all mechanic or other liens, on or before the _____ day of _____. And the party of the second part covenants and agrees with the party of the first part, in consideration of the faithful performance of the above specified work, to pay to the party of the first part the sum of _____ dollars, as follows: _____

And it is further mutually agreed by and between both parties, that in case of disagreement in reference to the performance of said work, all questions of disagreement shall be referred to _____ and the award of said referees or a majority of them shall be binding and final on all parties.

In Witness Whereof, We hereunto and to a duplicate hereof set our hands and seals the day and year first above written.

(Signatures.) (Seals.)

Executed in presence of

(6.)

An Agreement for Making a Quantity of Manufactured Articles.

Articles of Agreement, between _____ (*the buyer*) of the one part, and _____ of the other part.

The said _____ (*the manufacturer*) for the consideration hereinafter mentioned, doth covenant that he will, at his own charge, make for the said _____ (*describe the articles to be made*)

of the same quality of materials and goodness, as, and in all other respects according to a pattern agreed between the said parties, _____, and deliver the same to the said _____ at _____ within _____ months from the date hereof. And the said _____ in consideration thereof, doth covenant to pay to the said _____ at the rate of _____ per dozen for the articles so made at the expiration of _____ months from the delivery of the said _____ as aforesaid. And it is agreed, that if any of the said _____ shall not be made agreeable to the said pattern, and for that reason shall be rejected by the said _____ he the said _____ shall take back such as shall so be refused, and deliver the said _____ the like quantity of the goodness and make according to the pattern aforesaid.

In Witness, etc.

(Signatures.) (Seals.)

(7.)

Agreement to Revive Debt Discharged by Bankruptcy.

Agreement made this _____ day of _____ 19____, between _____ of _____, hereinafter called the debtor, and _____, of _____, hereinafter called the creditor.

Whereas on the _____ day of _____, 19____, said debtor, being then indebted to the said creditor in the sum of _____ dollars, was adjudged a bankrupt, and under such bankruptcy his creditors have been paid a divi-

dend of _____ per cent. on their claims, and he has been fully discharged from all liability for the residue of his said debts; but in consequence of said creditor's having advanced to him during said bankruptcy proceedings, moneys for his personal and family expenses, and for other good and sufficient reasons, he considers himself morally bound to pay him the residue of said debt, as well as the sum of _____ dollars advanced to him as aforesaid: Now these presents witness that, in consideration of the facts before recited, as also of the agreement of the said creditor hereinafter contained, and for the purpose of rendering himself legally liable to said creditor for the payment of the remainder of said debt, from which he was discharged in bankruptcy as aforesaid, amounting to the sum of _____ dollars, the said debtor hereby expressly acknowledges that he is justly indebted to the said creditor in said sum of _____ dollars, as well as the sum of _____ dollars advanced to him as aforesaid since his said bankruptcy, and agrees to pay said sums within _____ months from the date hereof, together with interest at the rate of _____ per cent per annum.

And the said creditor, in consideration of the promise and agreement hereinbefore contained, hereby agrees that he will not require payment of, or sue for, the said debt unless and until default shall be made in the payment thereof, at the time hereinbefore appointed for the payment of the same.

In witness, etc.

(Such an agreement must not be entered into prior to or during the bankruptcy proceedings.)

(8.)

Agreement to Revive a Debt Barred by the Statute of Limitations.

This Agreement made this _____ day of _____, 19____, between _____, of _____, hereinafter called the debtor, and _____, of _____, hereinafter called the creditor.

Whereas on the _____ day of _____, 19____, the said debtor was justly indebted to the said creditor in the sum of _____, for *(here state the consideration for said indebtedness—as for goods purchased, money loaned, and if evidenced by a promissory note describe it)*, and said indebtedness being still unpaid but barred by the statute of limitations, the said debtor, recognizing his moral obligation to pay the same, and being desirous to renew said indebtedness for the purpose of giving full effect to his liability for the payment of such debt, enters into the following agreement:

In consideration of his said indebtedness to said creditor as aforesaid, and of the forbearance of said creditor to sue for the same before the recovery thereof was barred by statute of limitations, the debtor hereby acknowledges the said debt to be justly due to the said creditor, and promises and agrees to pay the same within _____ years from the date hereof, together with interest thereon at the rate of _____ per cent. per annum.

And the said creditor in consideration of the promise and agreement hereinbefore contained, hereby agrees not to require payment of said debt, or to sue for the same, unless and until default shall be made in the payment thereof at the time appointed.

In witness, etc.

(9.)

Subscription to Build a Church.

Whereas, The trustees of a church corporation, known as _____ are about to erect a church for such corporation: Now, therefore, we, the undersigned, for the purpose of such erection, in consideration of our mutual promises, hereby agree to and with such trustees, and to and with each other, to pay to _____ the treasurer of said corporation, or his successor in office, the respective sums set opposite our several names, on or before the _____ day of _____, 19____. And we hereby authorize and direct said trustees to expend the moneys so subscribed by us in the erection of said church.

(10.)

Subscription to a Y. M. C. A. Building.

Agreement made this _____ day of _____, 19____, between the Young Men's Christian Association of _____, hereinafter called the Association, and the parties whose names are hereunto subscribed, hereinafter called the subscribers.

Whereas the subscribers are desirous and deem it for their advantage to have a building for such Association, with a library, reading rooms and gymnasium, erected at _____, in the county of _____, and state of _____, and the Association has agreed to erect such a building at said _____, at a cost not to exceed the sum of _____ dollars: Now this agreement witnesseth that, in consideration of the mutual promises herein contained, the Association and the subscribers hereto agree as follows:

1. The Association hereby agrees to erect, or cause to be erected, said building, at _____, according to plans and specifications to be approved by the board of trustees of said Association, at a cost not to exceed _____ dollars, and to have the same ready for occupancy on or before the _____ day of _____, 19____.

2. The subscribers hereto, in consideration of said undertaking to erect, or cause to be erected, said building, as herein specified, hereby agree, each for himself, or herself, his or her heirs, executors and administrators, to and with said Association, and with each other, to pay to said Association the sums set after their respective names, on the dates and according to the terms herein expressed.

3. It is further agreed that this contract shall not be binding on either party hereto until the sum of _____ dollars at least is subscribed; provided, however, that neither said Association, nor any subscriber, or all of them shall have power to cancel this agreement, as to him, her or them, prior to the _____ day of _____, 19____, it being the object of this proviso that the parties shall have until that date to secure subscriptions amounting to the entire sum of _____ dollars.

4. It is also agreed that if said entire sum of _____ dollars is not subscribed on or before the _____ day of _____, 19____, then any party hereto shall have power to cancel this contract as to him, her, or them, by giving

a written notice, personally or by mail, of an intention to do so. If said agreement is cancelled by said Association, notice addressed to the last ascertainable post-office address of any subscriber shall be sufficient; if by a subscriber, notice shall be given to the board of trustees.

5. It is further agreed that within _____ days from the time the total amount of _____ dollars is subscribed, said Association may call for the payment of at least twenty-five per cent. (25%) of the respective subscriptions of said subscribers, and may call for the whole or any part of the remainder at any time after _____ months from the first call.

In Witness Whereof, The said Association has caused this instrument to be executed in its name and sealed with its seal by _____ its _____ thereunto duly authorized, and the several subscribers have set their hands and affixed their common seal the day and year first above written.

(11.)

Agreement to Indemnify Corporation for Issue of New Certificate.

Whereas, The _____ Company has heretofore delivered to _____ a certificate for _____ shares of stock in said company, of which shares he is the owner, and the said _____ has represented to said company, and now declares, that the said certificate has been mislaid, lost or destroyed, and has applied to said company to give him another certificate in place thereof, which the said company has consented to do upon receiving the indemnity hereinafter contained, in which _____ as surety has agreed to join:

Now, therefore, the said (*shareholder*) and _____ (*surety*) do hereby jointly and severally agree to save harmless and indemnify the said company from and against all claims and demands in respect of the said original certificate; and from and against all damages, losses, costs, charges and expenses which said company may sustain, incur or be liable for, or in consequence of any such claims or demands, or of its having given to said shareholder a second certificate as aforesaid.

In witness, etc.

(12.)

Party Wall Agreement.

Whereas _____ of _____, in the county of _____, and state of _____, and _____ of _____ of said _____ respectively own two adjoining parcels of land on the _____ side of _____ street, in said _____, the line dividing said parcels being _____ feet from the _____ line of _____ street, which crosses said _____ street at a right angle, the parcel owned by the said _____ lying _____ of said dividing line; and whereas said parties are desirous to provide for the erection of a party wall on said line: Now this agreement, made this _____ day of _____, 19____, by and between said _____, party of the first part, and said _____, party of the second part, witnesseth:

1. Whichever party first builds adjoining said line shall erect a wall thereon, of such length as such party shall see fit, the same to be of good materials and workmanship, and in conformity with the building laws for the

time being in force; but not more than six inches of wall in thickness, with its proportion of the necessary foundation, shall be placed on land of the other party without his consent.

2. Said wall, when so built, shall be and remain a party wall.

3. Whenever the owner for the time being of the other parcel uses said wall, or any part thereof, he shall pay to the party who constructed the same, or to his heirs or assigns, one half of the then value of the entire structure of said wall, or so much thereof as he may use, including piles, or other foundations, or substructure, and coping.

4. Either party may add to said wall in height, depth, thickness or length, and in case of damage may repair, or in case of destruction rebuild said wall and any addition thereto, carrying up flues and the like to leave the other party as near as may be in as good condition as before, and using good materials and workmanship, and conforming to the building laws, and doing work from his own side if the other side is built upon; and in case of repairs one half of the cost of such repairs shall be paid to the party making the same by the owner of the other parcel, on demand; and one-half of the value of any such rebuilt wall, or of any addition made as aforesaid to any wall, when used, shall be paid for like the original structure. No addition to the thickness is to be made by either on land of the other unless such land is vacant, and in no event so as to cause, inclusive of such addition, more than six inches of wall, with its proportion of the necessary foundation, to be on land of the other party, without the consent of such party.

5. Said parties mutually covenant, for themselves and their respective heirs and assigns, to observe the above agreement, and that the covenants herein contained shall run with the land, but no owner is to be responsible except for his acts and defaults while owner.

In witness, etc.

(13.)

Agreement as to Encroachment.

Agreement made this _____ day of _____, 19____, between _____, of _____ party of the first part, and _____, of _____, party of the second part.

Whereas the party of the first part is the owner of a building situate on the _____ side of _____ street in the city of _____, and the party of the second part is the owner of a lot of land adjoining thereto on the _____ side thereof; and whereas by mistake a portion of the _____ wall of said building encroaches on the land of the said party of the second part; it is now mutually agreed as follows:

1. The said encroachment of said _____ wall of said building shall be deemed to have been made, and the continuance of the same hereafter shall be deemed to be with the express license and consent of the said party of the second part, to the intent that the said party of the first part shall not acquire any easement or right in respect thereof.

2. The said party of the first part shall pull down and remove the said wall, so far as the same encroaches upon the said land of the party of the

second part, within _____ months after the said party of the second part shall have given to the said party of the first part, or to the owner or occupant for the time being of the said building, a notice in writing in that behalf, and every such notice shall be sufficient if mailed to such owner or occupant at his usual post-office address, or delivered to any person in the apparent occupation of said building although not addressed to any person by name or description.

3. The respective owners for the time being of the said lots of land shall have the benefit of and be bound by this agreement, and shall be deemed to be included wherever the names of the said parties hereto respectively occur.

In witness, etc.

(14.)

Agreement for Sale of Land with Forfeiture Clause.

Articles of Agreement, made this _____ day of _____ in the year of our Lord one thousand nine hundred and _____ between _____ party of the first part, and _____ party of the second part,

Witness, That said party of the first part hereby covenants and agrees, that if the party of the second part shall first make the payment and perform the covenants hereinafter mentioned on his part to be made and performed, the said party of the first part will convey and assure to the party of the second part, in fee simple, clear of all incumbrances whatever, by a good and sufficient warranty deed, the following lot, piece, or parcel of ground, viz.: _____ And the said party of the second part hereby covenants and agrees to pay to said party of the first part, the sum of _____ dollars, in the manner following: _____ dollars, cash in hand paid, the receipt whereof is hereby acknowledged, and the balance _____ with interest at the rate of _____ per centum per annum, payable _____ annually, on the whole sum remaining from time to time unpaid, and to pay all taxes, assessments, or impositions that may be legally levied or imposed upon said land, subsequent to the year 19____. And in case of the failure of the said party of the second part to make either of the payments, or perform any of the covenants on his part hereby made and entered into, this contract shall, at the option of the party of the first part, be forfeited and determined, and the party of the second part shall forfeit all payments made by him on this contract, and such payments shall be retained by the said party of the first part in full satisfaction and in liquidation of all damages by him sustained, and he shall have the right to reënter and take possession of the premises aforesaid.

It is mutually agreed that all the covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators and assigns of the respective parties.

In Witness Whereof, The parties to these presents have hereunto set their hands and seals the day and year first above written.

(Signatures.) (Seals.)

Signed, Sealed, and Delivered in presence of

(15.)

Contract to Convey Real Estate with Provision for Liquidated Damages.

This Article of Agreement, Made and entered into the _____ day of _____ one thousand nine hundred and _____ between _____ of the first part, and _____ of the second part,

Witnesseth, as follows: The said party of the first part hereby agrees to sell unto the said party of the second part all that parcel of land situated, bounded, and described as follows, that is to say: _____ for the sum of _____ dollars, to be paid by the said party of the second part, in manner and at the times hereinafter mentioned and covenanted, on the part of the said party of the second part: And the said party of the first part further agrees, that on the _____ day of _____ on receiving from the said party of the second part the sum of _____ dollars, the said party of the first part shall and will, at _____ at his own proper cost and expense, execute and deliver to the said party of the second part, or to his assigns, a proper deed of conveyance, duly acknowledged, for the conveying and assuring to him or them the fee simple of the said premises, free from all incumbrances, which deed of conveyance shall contain a general warranty, and the usual full covenants.

And the said party of the second part hereby agrees to purchase of the said party of the first part the premises above mentioned, at and for the price and sum above mentioned, and to pay to the said party of the first part the purchase-money therefor, in manner and at the times following, to wit: _____

And it is further agreed by and between the parties to these presents, that the said party of the first part shall have and retain the possession of said premises, and be entitled to the rents and profits thereof until the _____ day of _____ when full possession of the same shall be delivered to the said party of the second part, by the said party of the first part:

And it is understood and agreed, that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, and assigns of the respective parties.

And it is further hereby agreed, that in case the said party of the first part shall fail or refuse to execute and deliver a proper deed of conveyance in manner and at the time and place above specified for that purpose, provided the party of the second part shall be ready to fulfill and perform the covenants then to be fulfilled on his part; or in case the said party of the second part shall fail or refuse to pay the said sum of _____ at the time and place as above agreed upon, provided the party of the first part shall be ready to deliver such deed of conveyance, as aforesaid; then the party so failing shall and will pay to the other party, or his assigns, the sum of _____ dollars, which sum is hereby declared, fixed, and agreed upon, as the liquidated amount of damages to be paid by the party so failing as aforesaid, for non-performance.

(Signatures.). (Seals.)

Signed, Sealed, and Delivered in presence of

(16.)

An Agreement for the Sale and Purchase of an Estate, followed by Special Clauses.

Articles of Agreement, Had, made, concluded, and agreed upon this _____ day of _____, A. D. 19____, between _____ of _____, of the one part, and _____ of _____, of the other part. First, the said (*seller*) in consideration of the sum of _____ to him paid by the said (*buyer*) at or before the sealing and delivery of these presents, and of the further sum of _____ to be paid as hereinafter is mentioned, doth hereby for himself, his heirs, executors, and administrators, and every of them, covenant, promise and agree, to and with the said _____ his heirs, executors, and administrators, and every of them, by these presents, that he the said _____ his heirs and assigns (and all and every other person and persons whatsoever claiming or to claim any right, title, or interest under him, or any other person or persons whatsoever, of, in, or to the lands and premises hereinafter mentioned) shall and will, at the proper costs and charges of the said _____ his heirs and assigns (except fees to counsel), on or before the _____ day of _____ next ensuing, by such conveyances, assurances, ways and means in the law, as he the said _____ his heirs and assigns, or his or their counsel, shall reasonably devise, advise, or require, well and sufficiently grant, sell, release, convey, and assure to the said _____ and his heirs, or to whom he or they shall appoint or direct, all that _____ situate _____ now in the tenure or occupation of _____ or his assigns, (*description*) with covenants to be therein contained that the said premises, at the time of such conveyance, are free from all incumbrances and demands whatsoever (except _____) and all other usual and reasonable covenants. Such conveyance to convey to the purchaser a good and clear title to the premises therein described. In consideration whereof the said _____ for himself, his heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree, to and with the said _____ his heirs, executors, and administrators, by these presents, that he the said _____ his heirs, executors, or administrators, or some of them, shall and will, well and truly, pay, or cause to be paid, unto the said _____ his heirs, executors, or administrators, the aforesaid sum of _____ at the time of executing the said conveyances. And for the true performance of all and every the covenants and agreements aforesaid, each of the said parties to these presents doth hereby bind himself, his heirs, executors, and administrators to the other of them, his heirs, executors, administrators, and assigns in the penal sum of _____

In Witness Whereof, The said parties to these presents have hereunto set their hands and seals the day and year first above written.

(Signatures.) (Seals.)

Signed, Sealed, and Delivered in presence of

An agreement for the sale of lands should always state the covenants, whether of general or special warranty, which it is intended that the contemplated conveyance shall contain.

(17.)

Covenants, Provisos, and Agreements, which may be Inserted in the Preceding Form.

1. *Covenant that the vendor, before the purchase is completed, shall not commit waste, or grant any new leases.*

And also that the said _____ (*the seller*) shall not nor will, in the mean time, cut down any timber or trees, or commit any waste or spoil whatsoever, in or upon the premises, or any part thereof, nor shall or will grant any new leases of the premises, or any part thereof, without the privity or consent of the said _____ (*the buyer*) or his heirs or assigns.

2. *Another covenant for the payment of the purchase-money.*

And the said _____ (*the buyer*) doth hereby covenant and agree to and with the said _____ (*the seller*) his heirs, executors, and administrators, that upon sealing and executing such conveyance and assurance of the said _____ unto him and them as aforesaid, according to the true intent of these presents, he the said _____ his heirs, executors, or administrators, shall and will pay, or cause to be paid, unto the said _____ his heirs, executors, or administrators, the said sum of _____ in full for the purchase of the said premises. (*Or there may be an agreement to retain part of the purchase-money to pay off an incumbrance, as follows:*)

And it is agreed between the said parties that the said _____ shall or may retain out of the said purchase-money the sum of _____ for the purpose of paying off the sum of _____ secured by a mortgage on the said premises, given by the said _____ to _____ bearing date _____ when the said sum shall become due by virtue of the said mortgage.

3. *This agreement may be inserted:*

And it is agreed, that if the counsel of the said _____ shall not approve of the title of the said _____ to the said premises, this agreement shall be void.

4. *This proviso may be inserted:*

Provided always, and it is hereby mutually covenanted and agreed, by and between the parties to these presents, for themselves and their respective heirs, in manner as follows, viz: That in case the counsel of the said _____ (*the buyer*) shall not approve of the title of him the said (*the seller*) to the said _____ or in case _____ (*the buyer*) on his view thereof (he not having ever viewed the same) will not proceed in the purchase thereof, and shall and do, within one month next after the date hereof, give notice, in writing, to the said _____ (or to _____ of _____) that he will not purchase the said _____ then and in either of the cases, these presents shall be absolutely void; and that then he the said _____ (*the seller*) his heirs, executors, or administrators, shall and will, within six months now next ensuing, well and truly repay, or cause to be repaid unto the said _____ (*the buyer*) his heirs, executors, administrators, or assigns, the said sum of _____ so by him now paid as aforesaid, together with legal interest for the same, from henceforth to be computed until payment thereof.

5. *A provision in articles of purchase, in case of the delay or default of either party.*

If by reason of any delay, neglect, or default, by or on the part of the said _____ (*the purchaser*) or his heirs, or his or their counsel or agents, the said conveyances of the said estates and premises shall not be ready and tendered to the said _____ (*the vendor*) or his heirs, to be executed, on or before the said _____ day of _____ then and in such case, the said _____ his _____ shall and will pay and allow to the said _____ his _____ interest for the said sum of _____ at the rate of _____ to be computed from the _____ day of _____ until the said _____ (*the principal sum*) shall be paid as aforesaid; but if, by reason of any delay, neglect or default, by or on the part of the said _____ or any claiming under him, such conveyances as aforesaid shall not be executed on or before the said _____ day of _____ then and in such case, no such interest as aforesaid shall be paid or allowed during the time of such delay of the said _____

6. *An agreement that if a good title, &c., cannot be made on, &c., the premises shall stand as security for the money paid down, &c.*

It is hereby further agreed and declared by and between all the said parties to these presents, and particularly the said (*the vendors*) do hereby agree and declare, that in case they cannot make out a good title to, and execute and perfect such conveyances and assurances of the premises as aforesaid on or before the _____ day of _____ now next ensuing, then the said _____ and every part thereof, shall remain and be a security to the said _____ (*the purchaser*) for securing to him, his _____ the repayment of the said sum of _____ now by him paid as aforesaid, at or upon the said _____ day of _____ now next ensuing, together with interest for the same after the rate of _____ from henceforth in the meantime and until payment thereof, which interest in such case they the said _____ (*the vendors*) do hereby for themselves, severally and respectively, and for their several and respective heirs, _____ promise and agree to pay accordingly, and then, also, in such case all such rents, _____ as he the said _____ (*the purchaser*) shall have received, by or out of the premises as aforesaid, shall be deemed and allowed by him in part of payment of the same _____ (*the principal purchase-money*) and interest.

7. *That if the other parties do not perform their covenants, the purchaser shall not be obliged to perform his.*

And it is mutually agreed and declared to be the true intent and meaning of these presents, that if it shall happen that any of them the said _____ their heirs, _____ shall neglect to perform his or their parts of the covenants and agreements herein contained, that then, and in any such case, the said _____ his heirs, executors, and administrators, or any of them, shall not be hereby obliged to perform his and their covenants herein contained, or any of them, but shall, if he shall think fit, be absolutely discharged from the same.

(18.)

Agreement for the Sale of an Estate by Private Contract.

Articles of Agreement, Made this _____ day of _____ between _____ of _____ and _____ of _____

The said _____ agrees to sell to the said _____ all that _____ (*description*) with the appurtenances, for the sum of _____ and will, on or before the _____ day of _____ next, on the receipt of the said sum of _____ at the charges of the said _____ execute a proper conveyance thereof, with a covenant of general warranty and against incumbrances, conveying a good and clear title to said premises to the said _____ and his heirs and assigns.

And the said _____ agrees, that, on the execution of such conveyance, he will pay the said sum of _____ to said _____ or his assigns.

And it is further agreed, that the conveyance shall be prepared by and at the expense of the said _____ to the approbation of the respective counsel of the said _____ and _____ and that all taxes and outgoings in respect of the premises in the meantime shall be paid by the said _____. And it is agreed, that the said _____ shall receive the rents and profits of the premises, from _____ next, to his proper use. And it is agreed, that if the said conveyance shall not be executed, and the purchase-money paid on or before the _____ day of _____ then the said _____ shall pay interest for the same from the same day, unto the said _____ after the rate of _____ per cent. per annum.

In Witness Whereof,

(Signatures.) (Seals.)

(19.)

Short Agreement for Sale of Real Estate with Mortgage for Part of Purchase-Money.

Agreement made this _____ day of _____ A. D. 19____, between _____ of _____ of the first part, and _____ of _____ of the second part.

The party of the first part hereby agrees to sell, and the party of the second part to purchase, a certain estate situated _____ and bounded as follows: _____ Said premises are to be conveyed on or before _____ by a good and sufficient warranty (*or quit claim*) deed of the party of the first part conveying a good and clear title to the same free from all incumbrances _____ and for such deed and conveyance the party of the second part is to pay the sum of _____ dollars of which _____ dollars have been paid this day, _____ dollars are to be paid in cash upon the delivery of said deed, and the remainder is to be paid by the note of the party of the second part, dated _____ bearing interest at _____ per cent. per annum, payable semi-annually, and secured by a power of sale mortgage in the usual form upon the said premises, such note to be payable _____. Full possession of the said premises, free of all tenants is to be delivered to the party of the second part at the time of the delivery of the deed, the said

premises to be then in the same condition in which they now are, reasonable use and wear of the buildings thereon alone excepted.

The deed is to be delivered and the consideration paid, at _____

In witness whereof the said parties hereto, and to another instrument of like tenor, set their hands and seals on the day and year first above written.

In presence of

(20.)

Agreement for Sale of Real Estate Subject to Mortgage and Leases.

Agreement made this _____ day of _____ A. D. 19____, between _____ of _____, of the first part, and _____ of _____, of the second part.

The party of the first part hereby agrees to sell, and the party of the second part to purchase, a certain estate situated _____ and bounded as follows: _____ Said premises are to be conveyed on or before _____ by a good and sufficient warranty (*or quitclaim*) deed of the party of the first part conveying a good and clear title to the same free from all incumbrances, except a certain mortgage for the sum of _____ dollars, dated _____ and recorded _____ on which _____ dollars of the principal remains unpaid, (*if purchaser is to assume the mortgage add*) which the said _____ agree to assume and pay as a part of the consideration for this conveyance; and outstanding leases to the present tenants, viz: _____ and for such deed and conveyance the party of the second part is to pay the sum of _____ dollars in addition to the amount of said mortgage, of which _____ dollars have been paid this day, and the remaining sum of _____ dollars is to be paid in cash upon the delivery of said deed. Full possession of the said premises, free of all tenants except as aforesaid, is to be delivered to the party of the second part at the time of the delivery of the deed, the said premises to be then in the same condition in which they now are, reasonable use and wear of the buildings thereon, and damage by fire or other unavoidable casualty excepted.

The buildings on said premises shall, until the full performance of this agreement, be kept insured in the sum of _____ dollars by the party of the first part, in offices satisfactory to the party of the second part, and, in case of any loss, all sums recovered or recoverable on account of said insurance shall be paid over or assigned, on delivery of the deed, to the party of the second part, unless the premises shall previously have been restored to their former condition by the party of the first part.

Rents and mortgage interest shall be apportioned as of the day of the delivery of the deed, and the taxes assessed for the year 19____, shall be paid by _____. Policies of insurance shall be assigned to the said _____ if he so request, unearned premiums to be apportioned as above.

The deed is to be delivered and the consideration paid, at the Registry of Deeds in which the deed should by law be recorded, at twelve o'clock, noon, of the _____ day of _____ 19____, unless the parties hereto agree in writing to some other time and place.

If the party of the first part shall be unable to give title or to make conveyance as above stipulated, any payments made under this agreement shall

be refunded, and all other obligations of either party hereunto shall cease, but the acceptance of a deed and possession by the party of the second part shall be deemed to be a full performance and discharge hereof.

In consideration of the above, _____, wife of the said _____, hereby agrees to join in the deed to be made as aforesaid, and to release to the party of the second part all right of dower and homestead in the said premises.

It is understood that a broker's commission of _____ per cent. on the said sale is to be paid to _____ by the said party of the first part.

In witness whereof the said parties hereto, and to another instrument of like tenor, set their hands and seals on the day and year first above written.

In presence of

Extension.

The time for the performance of the foregoing agreement is extended until _____

Witness our hands and seals this _____ day of _____ 19____.

(21.)

An Agreement to Be Signed by an Auctioneer, after a Sale by Auction.

I Hereby Acknowledge, That _____ has been this day declared the highest bidder and purchaser of (*describe the real estate*) at the sum of _____; and that he has paid into my hands the sum of _____ as a deposit, and in part payment of the purchase-money; and I hereby agree that the vendor shall in all respects fulfil the conditions of sale, a copy of which is hereto annexed.

Witness my hand,

(Signatures.) (Seals.)

(22.)

An Agreement to Be Signed by the Purchaser, after a Sale by Auction.

I Hereby Acknowledge, That I have this day purchased by public auction all that (*describe the estate*) for the sum of _____; and have paid into the hands of _____ the sum of _____ as a deposit and in part payment of the said purchase-money; and I hereby agree to pay the remaining sum of _____ unto (*the vendor*) at _____ on or before the _____ day of _____; and in all other respects, on my part, to fulfil the annexed conditions of sale.

Witness my hand this _____ day of _____.

(Signatures.) (Seals.)

(23.)

An Agreement to Make an Assignment of a Lease.

Whereas, _____ (*the lessor*) hath by his deed indented, dated _____, demised unto _____ (*the lessee*) all that: _____ to have and to hold to

him the said _____ his heirs and assigns as by the said deed indented more fully appears: Now the said _____ for and in consideration of _____ dollars, doth hereby for himself, (*his heirs, &c.*) covenant, _____ that he the said _____ before the _____ day of _____ shall and will, at the costs and charges of _____ (*the assignee*), his (*heirs, &c.*) by deed indented, assure, assign, and grant over to the said _____ (*his heirs, &c.*) the said (*the premises*) and all his estate, right, title, and demand therein: To have and to hold to the said _____ (*the assignee*) his (*heirs, &c.*) during the residue of the said term of years, then to come, of, in, and to the same, by virtue of the said recited indenture, and under the rents, covenants, and agreements therein specified.

(*Signatures.*) (*Seals.*)

(24.)

Agreement for Damages in Laying Out or Altering Road.

Whereas, A road was laid out on the _____ day of _____ A. D. 19____, by _____ and _____, Commissioners of Highways of the Town of _____ in the County of _____ and State of _____ on the application of _____, as follows, commencing _____ which road passes through the land of _____ being known and described as follows, viz: _____

Now, therefore, it is hereby agreed between the said Commissioners and the said _____ that the damages sustained by the said _____ by reason of the laying out and opening said road upon his land, hereinbefore described, be liquidated and agreed upon at _____ dollars.

In Witness Whereof, The said Commissioners and the said _____ have hereunto subscribed their names this _____ day of _____ A. D. 19____

(*Signatures.*)

Commissioners of Highways.

(25.)

An Agreement between a Person Who Is Retiring from the Active Part of a Business, and Another Who Is to Conduct the Same for Their Mutual Benefit.

Articles of Agreement, Made, entered into, and concluded upon, this _____ day of _____ A. D. 19____, between _____ of _____ of the one part, and _____ of _____ of the other part: Whereas the said _____, hath conducted and managed for some time past the trade or business of the said _____, and in consideration of the attention and assiduity of the said _____ thereunto, the said _____ is willing to continue the said _____ in the management thereof under the covenants, restrictions, and agreements hereinafter contained; and in consequence thereof, an inventory and appraisement hath been made and taken of the stock, and entered in two receipt-books, one of which is to remain in the custody of each of them, the said parties to these presents, and is subscribed by both of them, and the value of the said stock in the whole, appears to the amount of the sum of _____: Now these presents witness, that for and in consideration of the covenants and agreements hereinafter contained on the part of the said _____ to be

performed, the said _____ for himself, his executors, and administrators, doth hereby covenant, promise, and agree, to and with the said _____, that it shall and may be lawful to and for the said _____ from time to time, during the term of _____ years, to be computed from the day of the date of these presents, if they the said _____ and _____ shall jointly so long live, to trade with the said stock, and to manage and improve the same, in such manner as to the said _____ under the direction of the said _____, shall seem meet, upon trust nevertheless, and to the intent and purpose that the said _____ shall and do, by and out of the money which shall arise by sale of any part or parts of the said stock, buy such goods as shall be requisite to keep up and continue the present quality and value thereof, and by and out of the profits which shall arise from the trade and dealing, in the first place yearly and every year, pay the whole rent of the said house and shop, and pay and discharge all taxes which now are, or shall hereafter be, assessed or imposed on him the said _____ or the said _____ on account of the said house and trade, and in the next place to pay to him the said _____ or his assigns, every year during the said term of _____ years, if they the said _____ and _____ shall so long live, one clear annuity or yearly sum of _____ by equal half yearly payments, on the _____ day of _____ and the _____ day of _____ without any deduction or abatement whatsoever, and subject thereto, to retain the residue and overplus of the profits which shall arise from his trade and dealing, to and for his own sole use and benefit, as a recompense and satisfaction for his care and trouble in the sale and management of the said stock. And the said _____ in consideration of the premises, and of the covenant and agreement hereinbefore on the part of the said _____ contained, doth for himself, his executors, and administrators, covenant, declare, and agree, that he the said _____ shall and will from time to time, and at all times, for and during the said term of _____ years, if they the said _____ and _____ shall so long jointly live, diligently apply himself to the care and management of the said stock, trade, and business, according to his best skill, abilities, and discretion, and apply and dispose of the money which shall arise from the sale thereof, and all the profits of his trade and dealings, to answer and discharge the trusts hereby reposed in him, in such manner as hereinbefore is directed, declared, or expressed. And also shall and will write true and perfect entries, in proper books of accounts, of all such goods as shall be sold, and of all moneys which shall be paid and received by him, and permit the same, from time to time, to be inspected by him the said _____ or such other person or persons as he shall appoint. And further, that he the said _____ shall not nor will, at any time during the continuance of the said term of _____ years, buy or sell, or in anywise trade or deal in his own name, but in the name only of him the said _____ upon the trusts aforesaid; nor do any act whatsoever, whereby the said stock, or any part thereof, may be attached, or taken in execution. And also that on the _____ day of _____ next, and so at every succeeding _____ day of _____, during the said term of _____ years, or oftener, if thereto required by the said _____, he the said _____ shall and will

take a full account in writing of the said stock, then remaining in the said trade, and of the profits thereof, and within ten days thereafter deliver the same to the said _____ in order to manifest to him a true state thereof, and of his proceedings in the trade by him carried on therewith. And at the expiration, or other sooner determination, of the said term of _____ years, he the said _____, his executors or administrators, shall and will deliver up to him the said _____, his executors or administrators, the stock then remaining for his or their own use and benefit, to the value of the sum of _____ losses by bad debts, decay of goods, and other inevitable casualties excepted.

Witness our hands and seals, this _____ day of _____ in the year 19____

In presence of

(Signatures.) (Seals.)

(26.)

A Brief Building Contract.

Contract for building made this _____ day of _____ one thousand nine hundred and _____ by and between _____ of _____ in the County of _____ and _____ of _____ in the County of _____ Builder.

The said _____ covenants and agrees to and with the said _____ to make, erect, build, and finish, in a good, substantial, and workmanlike manner, and of good and substantial material, a dwelling house (or other building) _____ upon a certain lot of land belonging to said _____ situate on _____ street in said _____ said house to be built agreeably to the draught, plans, explanations, or specifications, prepared by _____; and to be finished complete on or before the _____ day of _____. And said _____ covenants and agrees to pay to said _____ for the same _____ dollars as follows: _____ Security against mechanics', or other lien, is to be furnished by said _____ prior to the final payment by said _____

And for the performance of all and every the articles and agreements above mentioned, the said _____ and _____ do hereby bind themselves, their heirs, executors, and administrators, each to the other, in the penal sum of _____ dollars, firmly by these presents.

In Witness Whereof, We, the said _____ and _____ have hereunto set our hands the day and year first above written.

(Signatures.) (Seals.)

Executed and Delivered in Presence of

Contracts for building are among those most frequently made, and also among those which require the utmost care. A specification stating and describing all the things which the parties desire and intend to have done should always accompany the contract. It is very difficult for persons not accustomed to the

work to remember and specify, and properly describe, all the things they propose to have in the building; and all these things should be accurately and precisely stated in the specification. From omissions or errors of this kind, cases and questions are constantly arising. To assist those who have to prepare for themselves or others a contract of this sort, I have given, first, a brief and simple form; I now give a very full and minute form, prepared by a skillful lawyer, and in wide use.

(27.)

A Full and Minute Building Contract.

An Agreement, of two parts, made this _____ day of _____ in the year one thousand nine hundred and _____ by and between _____ party of the first part, and _____ party of the second part.

The said party of the first part, in consideration of the sum of money to be paid by the said party of the second part, as hereinafter mentioned, and the covenants and agreements hereinafter recited, to be kept and performed by the said party of the second part, does _____ for himself and his executors and administrators, Covenant, Promise, and Agree, to and with the said party of the second part, _____ that he _____ the said party of the first part, shall and will, in a good and workmanlike manner, and according to the best of his art and ability, do and perform the following work, and provide materials for the same, that is to say: _____

The whole of said work is to be performed, and all the said materials furnished in conformity with the plans and specifications of the same, as made by _____ the ARCHITECT hereby appointed by said party of the second part, which plans and specifications bear even date herewith, and are signed by the parties hereto, and under the superintendence and direction of _____ hereby appointed SUPERINTENDENT and AGENT of the said party of the second part, which plans and specifications are to be considered as forming a part of this agreement, as if herein fully written and drawn.

The said party of the first part further agrees that the work aforesaid shall be commenced on or before the _____ day of _____ 19____, and be constantly prosecuted, and the materials aforesaid promptly furnished, and that all said work shall be completed on or before the _____ day of _____ in the year one thousand nine hundred and _____, and, furthermore, that no charge of any kind shall be made by the said party of the first part to the said party of the second part, beyond the sum of _____ dollars, unless the said party of the second part, or the said Superintendent, shall alter the aforesaid plans and specifications, in which case the value of such alterations shall be added to the amount to be paid under this contract, or deducted therefrom, as the case may require: it being expressly understood that no extra work of any kind shall be performed, or extra materials furnished, by the said party of the first part, unless authorized by the said party of the second part, or the said Superintendent, in writ-

ing; and that the said party of the second part, and the said Superintendent may, from time to time, make any alterations of, to, and in the said plans and specifications, upon the terms aforesaid.

The said party of the first part, for himself and his legal representatives, farther promises and agrees that insurance shall be effected upon the building as soon as the roof is put on and covered; the amount of said insurance to be for such sum as the said party of the second part, and the said Superintendent shall direct, to be further increased, from time to time, at the direction of the said party of the second part, and the said Superintendent; the policy to be in the name and for the benefit of said party of the second part, or his legal representatives, and to be made payable, in case of loss, to _____ for whom it may concern;—each party to this agreement hereby agreeing to pay one-half the cost of such insurance.

The said party of the second part, for himself and his legal representatives, in consideration of the materials being provided and the labor done as herein required, and all other of the stipulations, requirements, matters and things herein set forth, being kept and performed by said party of the first part doth Covenant, Promise and Agree, to and with the said party of the first part: _____ that he will well and truly pay, or cause to be paid, unto the said party of the first part, or his legal representatives the sum of _____ dollars, in the manner following: _____

It is agreed by and between the parties to this agreement, as follows:

1st. That for each and every day's delay in the performance and completion of this agreement, or of any extra work under it, after the said _____ day of _____ in the year one thousand nine hundred and _____, there shall be allowed and paid by said party of the first part, to said party of the second part, or his representatives, damages for such delay if the same shall arise from any act or default on the part of the said party of the first part.

2d. That the said party of the first part, or his representatives, shall not be delayed in the constant progress of the work under this agreement, or any of the extra work under the same or connected therewith, by said party of the second part, or by his Superintendent or any other contractor employed by the said party of the second part, upon or about the premises; and for each and every day, if any, he shall be so delayed, _____ additional days to be allowed him to complete the work aforesaid, from and after the day hereinbefore appointed for its entire completion, unless upon the contingency provided for below in the 5th article.

3d. That each and every person employed, by sub-contract or "piece work," by the said party of the first part, in the providing materials or performing labor or works in the fulfillment or execution of this agreement, shall be, in the opinion of the said Superintendent, a suitable, competent, and satisfactory person.

4th. That the said party of the first part shall and will engage and provide at his own cost and expense, during the progress of the works under, and until the completion and fulfillment of this agreement, a thoroughly competent "Foreman of the Works," whose duty it shall be to attend to the general supervision of all matters hereby undertaken by said party of

the first part, and also to the correct and exact making, preparing, laying-out, and locating of all patterns, moulds, models, and measurements in, to, for, and upon the works hereby agreed upon, from and in conformity with the said plans and specifications, and according to the direction of said Architect.

5th. That if at any time during the progress of the work the said Superintendent shall find that said work is not carried forward with sufficient rapidity and thoroughness, or that the materials furnished, foreman of the works, sub-contractors or workmen employed by the party of the first part, are unsatisfactory, and insufficient for the completion of the work within the time and in the manner stipulated in the plans and specifications aforesaid, he shall give notice of such insufficiency and defects in progress, materials, foreman, sub-contractors, or workmen, to the party of the first part; and if within three days thereafter such insufficiency and defects are not remedied in a manner satisfactory to said Superintendent, the party of the second part, through the agency of said Superintendent, or otherwise, may enter upon the work, and suspend or discharge said party of the first part and all employed under him, and carry on and complete the work, by "days' work," or otherwise, as he may elect, providing and substituting proper and sufficient materials and workmen; and the expense thereof shall be chargeable to the said party of the first part, and be deducted from any sum which may be due to him on a final settlement; and the opinion of said Superintendent shall be final, and his certificate in writing conclusive evidence between the parties hereto, on all questions and issues arising on or out of this fifth article of this Agreement, subject to the final decision of the referees hereinafter named.

6th. That the said party of the first part shall be solely responsible for any injury or damage sustained by any and all person or persons, or property, during or subsequent to the progress and completion of the works hereby agreed upon, from or by any act or default of the said party of the first part; and shall be responsible over the party of the second part for all costs and damages which said party of the second part may legally incur by reason of such injury or damage; and that the said party of the first part shall give all usual, requisite, and suitable notices to all parties whose estates or premises, adjoining those upon which the works hereby agreed upon are to be done, may or shall be any way interested in or affected by the performance of said works.

7th. That the said party of the first part shall, from time to time, during the progress of said works, apply to the said Architect for all needful explanations of the true intent and meaning of the said plans and specifications; and that "working-plans" shall, at the expense of the said party of the second part, be from time to time, and whenever requisite, furnished by the said Architect to the said party of the first part, upon reasonable notice being given to the said Architect that the same are requisite and needful; and further, that the said party of the first part will not and shall not, in the execution, performance, and fulfillment of this agreement, in any way deviate from the entire and exact compliance with, adherence to, and fulfillment of the said plans, "working-plans," and specifications, by

reason of any practical difficulty which, in his opinion, may or shall arise or occur; unless some such deviation shall, in the opinion and by the certificate of the said Architect, become absolutely necessary and unavoidable, in which case said party of the first part is to make such deviation as may be directed by said Architect.

And Whereas it is the intention of the parties hereto, that the said party of the first part shall bear and pay all the expenses necessary for and incident to the carrying into full and entire execution and completion all the works contemplated in this agreement, it is further understood and agreed by and between the parties to this agreement, that in case any lien or liens for labor or materials shall exist upon the property or estate of the said party of the second part, at the time or times when by the foregoing terms or provisions of this agreement a payment is to be made by the said party of the second part to the said party of the first part, such payment, or such part thereof as shall be equal to not less than double the amount for which such lien or liens shall or can exist, shall not be payable at the said stipulated time or times, notwithstanding anything to the contrary in this agreement contained; and that the said party of the second part may and shall be well assured that no such liens do or can attach or exist before he shall be liable to make either of the said payments.

It is expressly understood by the party of the first part, that all the works described or referred to in the annexed specifications are to be executed by the said party of the first part, whether or not the said works are illustrated by the aforesaid plans or working-drawings; and that said party of the first part is to execute all works shown by the aforesaid plans, and working-drawings, whether or not said works are described or referred to in the said specifications.

If any apparent discrepancy shall be found to exist between the plans working-drawings, and specifications, the decision as to the fair construction of said discrepancy, and of the true intent and meaning of the plans, working-drawings, and specifications, shall be made by the Architect hereinbefore named; and said party of the first part shall provide and execute the said works in accordance with said decision,—with the right of a final decision by the referees hereinafter named,—as a part of the original works undertaken by said party of the first part.

And Further it is agreed by the parties hereto that they will submit each, all, and every demand between them hereinafter arising, if any, concerning the value of any changes of, or omissions in, or additions to, the aforementioned plans or specifications, or concerning the manner of performing or completing the work, or the time or amount of any payment to be made under this agreement, or the quantity or quality of the labor or materials, or both, to be done, furnished, or provided under this agreement, or any other cause or matter touching the work, the materials, or the damages contemplated, set forth, or referred to, in or by this agreement, or concerning the construction of this agreement, to the determination of _____ and _____ and _____, the award of whom, or the award of a majority of whom, being made and reported within _____ from the time hereinbefore fixed upon for the final completion of this agreement, to the

Superior Court for the County of _____, the judgment thereof shall be final; and if either of the parties shall neglect to appear before the Arbitrators, after due notice given him of the time and place appointed for hearing the parties, the Arbitrators may proceed in his absence.

In Witness Whereof, The parties aforesaid have interchangeably set their hands and seals the day and year first above written, to this and one other instrument of like tenor and date.

(Signatures.) (Seals.)

Executed and Delivered in the Presence of

CHAPTER VI.

CONSIDERATION.

SECTION I.

THE NEED OF A CONSIDERATION.

It is an ancient and well-established rule of the common law prevailing in this country, that no promise can be enforced at law unless it rests upon a *consideration*; by which word is meant a cause or reason for the promise. If it do not, it is called a *naked bargain*, and the promisor, even if he admits his promise, is under no legal obligation to perform a promise that he made without a *consideration*.

There are two exceptions to this rule. One is when the promise is made by a sealed instrument, or deed (every written instrument which is sealed is a deed). Here the law is said to imply a consideration; the meaning of which is that it does not require that any consideration should be proved. The seal itself is said to be a consideration, or to import a consideration.

The second exception relates to negotiable paper; and is an instance in which the law-merchant has materially qualified the common law. We shall speak more fully of this exception when we treat of negotiable paper.

The word "consideration," as it is used in this rule, has a peculiar and technical meaning. It denotes some *substantial* cause for the promise. This cause must be one of two things; either a benefit to the promisor, or else an injury or loss to the

promisee sustained by him at the instance and request of the promisor. Thus, if A promises B to pay him a thousand dollars in three months, and even promises this in writing, the promise is worthless in law, if A makes it as a merely voluntary promise, without a consideration. But if B, or anybody for him, gives to A to-day a thousand dollars in goods or money, and this was the ground and cause of the promise, then it is enforceable. And if A got nothing for his promise, but B, at the request of A, gave the same goods or money to C, this would be an equally good consideration, and the promise to pay B would be equally valid in law.

This requirement of a consideration sometimes operates harshly and unjustly, and permits promisors to break their word under circumstances calling strongly for its fulfilment. Courts have been led, perhaps, by this, to say that the consideration is sufficient if it be a substantial one, although it be not an adequate one. This is the unquestionable rule now, and it is sometimes carried very far. In one case an American court refused to inquire into the *adequacy* of the consideration,—or whether it was *equal* to the promise made upon it,—and said, if there was the *smallest spark* of consideration, it was enough, if the contract was fairly made with a full understanding of all the material facts. Still, there must be some consideration.

SECTION II.

WHAT IS A SUFFICIENT CONSIDERATION.

THE law detests litigation; at least courts say so; and therefore they consider anything a sufficient consideration which arrests and suspends or terminates litigation. Thus the compromise, or forbearance, or mutual reference to arbitration, or any similar settlement, of a suit, or of a claim, is a good consideration for a promise founded upon it. And it is no defense to a suit on this promise, to show that the claim or suit thus disposed of would probably have been found to have no foundation or substance. If there be an honest claim, which he who advances it believes to be well grounded, and which within a rational possibility may be so, this is enough; the court will not go on and try the validity of the claim or of the suit in order to-

test the validity of a promise which rests upon its settlement; for the very purpose for which it favors this settlement is the avoidance of all necessity of investigating the claim by litigation. But, for reasons of public policy, no promise can be enforced of which the consideration was the discontinuance of criminal proceedings; or any conduct by which public interests are harmed, as, for example, the procurement of the passage of a law by corrupt means.

If any work or service is rendered to one, or for one, and he requests the same, it is a good consideration for a promise of payment; and if he makes no promise, the law will imply the promise, that is, will suppose that he has made it, and will not permit him to deny it. The rule is the same as to payment for goods, or property of any kind, delivered to any one at his request.

No person can make another his debtor against that other's will, by a voluntary offer of work, or service, or money, or goods. But if that other accept what is thus offered, and retain the benefit of it, the law will, generally, imply or presume that it was offered at the request of that other party, and will also imply his promise to pay for it, and will enforce the promise; unless it is apparent, or is shown, that it was offered and received as a mere gift.

A promise is a good consideration for a promise; and it is one which frequently occurs in fact.

If A says to B, "If you will deliver goods to C, I will pay for them," although there is no obligation upon B to deliver the goods, if he does deliver them he furnishes a consideration for the agreement, and may enforce it against A.

An agreement by two or more parties to refer disputes or claims between them to arbitration, is not binding upon any of the parties unless all have entered into it.

The principle, that a promise is a good consideration for a promise, has been sometimes applied to subscription-papers; all who sign them being held on the ground that the promise of each is a good consideration for the promises of the rest. The law on the subject of these subscription-papers, and of all voluntary promises of contribution, is substantially this: no such promises are binding, unless something is paid for them, or unless some party for whose benefit they are made,—and this party may be one or more of the subscribers,—at the request

express or implied, of the promisor, and on the faith of the subscriptions, incurs actual expense or loss, or enters into valid contracts with other parties which will occasion expense or loss. As the objection to these promises or the doubt about them comes from the want of consideration, it may be cured by a seal to each name, or by one seal which is declared in the instrument to be the seal of each.

It is to be regretted that the law does not regard a merely moral consideration as a sufficient legal consideration; but so it is. Thus, it has been held in this country, that a note given by a father to a party who had given needful medicines, food, and shelter to his sick son, who was of full age, was void in law, because there was no legal consideration. And the same doctrine was applied where a son made a similar promise for food and support to his aged father. If, in either case, the promise had been made *before* the food or other articles were supplied, or even a request made *before* the supply, then the supply of the food and support would have been a good consideration. But they had all been supplied before any request or promise, and nothing was left but the moral obligation of a father to compensate one who had supported his son, or of a son to support his father; and this the law does not deem sufficient to make even an express promise enforceable at law.

SECTION III.

AN ILLEGAL CONSIDERATION.

If the whole of a consideration, or if any part of the consideration of an entire and indivisible promise, be illegal, the promise founded upon it is void. Thus, where a note was given in part for the compounding of penalties and suppressing of criminal prosecutions, it was held to be wholly void and uncollectible. And where a part of the consideration of a note was spirituous liquors, sold by the payee in violation of a statute, such note was held to be wholly void. But if the consideration consists of separable parts, and the promise consists of corresponding separable parts, which can be apportioned and applied, part to part, then each illegality will affect only the promise resting on it; for in fact there are many considerations and many promises.

If the consideration be entire and wholly legal, and the promise consists of separable parts, one legal and the other illegal, the promisee can enforce that part which is legal.

SECTION IV.

AN IMPOSSIBLE CONSIDERATION.

No contract or promise can be enforced by him who knew that the performance of it was wholly impossible; and therefore a consideration which is obviously and certainly impossible is not sufficient in law to sustain a promise. But if one makes a promise, he cannot always defend himself when sued for non-performance by showing that performance was impossible; for it may be his own fault, or his personal misfortune, that he cannot perform it. He had no right to make such a promise, and must answer in damages; or if he had a right to make it in the expectation of performance, and this has become impossible subsequently, —as by loss of property, for example,—this is his misfortune, and no answer to a suit on the promise. There are, however, obviously, promises or contracts which, from their very nature, must be construed as if the promisor had said, "I will do so and so, if I can." For example, if A promises to work for B one year, at \$20 a month, and at the end of six months is wholly disabled by sickness, he is not liable to an action by B for breach of his contract; and he can recover his pay for the time that he has spent in B's service. A mere want of money, which makes a pecuniary impossibility, is not regarded by the law as a legal impossibility.

SECTION V.

FAILURE OF CONSIDERATION.

If a promise be made upon a consideration which is apparently valuable and sufficient, but which turns out to be nothing; or if the consideration was originally good, but becomes wholly valueless before part performance on either side, there is an end of the contract, and the promise cannot be enforced. And if money were paid on such a consideration, it can be recovered back, but only the sum paid can be recovered without any increase or addition as compensation for the plaintiff's loss and disappointment, unless there were fraud or oppression.

If the failure of consideration be partial only, leaving a substantial, though far less valuable, consideration behind, this may still be a sufficient foundation for the promise, if that be entire. The promisor may then be sued on the promise; but he will then be entitled, by deduction, set-off, or in some other proper way, to due allowance or indemnity for whatever loss he may sustain as to the other parts of the bargain, or as to the whole transaction, from the partial failure of the consideration. Thus, if he promised so much money for work done in such a way, or as the price of a thing to be made and sold to him, and no work is done, or the thing is not made or sold, there is an end of the promise, because the consideration has failed. But if the work was done, but not as it should have been, or the thing made and sold, but not what it should have been, and the promisor accepted the work or the thing, he may now show that the consideration for his promise has partially failed, and may have a proportionate reduction in his promise, or in the amount he must pay. And if the promise be itself separable into parts, and a distinct part or proportion of the consideration failed, to which part some distinct part or proportion of the promise could be applied, that part of the promise cannot be enforced, although the residue of the promise may be.

If A agrees with B to work for him one year, or any stated time, for so much a month, or so much for the whole time, and, after working a part of the time, leaves B without good cause, it is the ancient and still prevailing rule, that A can recover nothing in any form or way. It has, however, been held in New Hampshire, that A can still recover whatever his services are worth, B having the right to set off or deduct the amount of any damage he may have sustained from A's breach of the contract. This view seems just and reasonable, and has been supported by adjudication in some other States. If A agrees to sell to B five hundred barrels of flour at a certain price, and, after delivering one-half, refuses to deliver any more, B can certainly return that half, and pay A nothing. But if B chooses to retain that half, or if he has so disposed of or lost it that he cannot return it, he must pay what it is worth, deducting all that he loses by the breach of the contract. And this case we think analogous to that of a broken contract of service; but B's liability to pay,

even in the case supposed as to goods, has been denied by some courts.

A difficulty sometimes arises where A, at the request of B, undertakes to do something for B, for which he is to be paid a certain price; and in doing it he departs materially from the directions of B and from his own undertaking. What are now the rights of the parties? This question arises most frequently in building contracts, in which there is usually some departure from the original undertaking. The general rules are these: If B assent to the alteration, it is the same thing as if it were a part of the original contract. He may assent expressly, by word or in writing; or constructively, by seeing the work, and approving it as it goes on, or being silent; for silence under such circumstances would generally be equivalent to an approval. But if the change be one which B had a right, either from the nature of the change, or the appearance of it, or A's language respecting it, to suppose would add nothing to the cost, then no promise to pay an increased price would be inferred from either an express or tacit approval. Generally, as we have seen, if A does or makes what B did not order or request, B can refuse to accept it, and, if he refuses, will not then be held to pay for it. But if he accepts it, he must pay for it. This consequence results, however, only from a voluntary acceptance. For if A choose, without any request from B, to add something to B's house, or make some alteration in it, which being done cannot be undone or taken away without detriment to the house, B may hold it, and yet not be liable to pay for it; and A has no right to take it away, unless he can do so without inflicting any injury whatever on B. This rule would apply whether the addition or alteration were larger or smaller.

It is sometimes provided in building contracts that B shall pay for no alteration or addition, unless previously ordered by him in writing. But if there be such provision, B would be liable for any alteration or addition he ordered in any way, or voluntarily accepted after it was made, when he could have rejected it.

So it is sometimes agreed that any additions or alterations shall be paid for at the same rate as the work contracted for. The law would imply this agreement if the parties did not make it expressly.

CHAPTER VII.

BONDS.

A BARGAIN where both parties make promises, and come under obligations, each to the other, may be made without seal, and would then be called an Agreement. If made under seal, it would generally be in the form of, and bear the name of, an Indenture. If a promise by one only, is made in writing, without a seal, it is a simple promise; but if it be made with a seal, then it would generally be in the form of, and bear the name of, a BOND.

The essentials of a bond are only that one party should acknowledge himself "held, bound, and obliged" unto another party, to pay to him a sum of money; and neither of the words "held," or "bound," or "obliged," are strictly necessary, although usual and proper: other words of the same meaning will have the same effect. In such a bond, the party bound is called the *obligor*, and the party to whom he is bound is called the *obligee*. The sum for which the obligor is bound is called the penal sum, or the *penalty*. Such a bond is simply an obligation to pay so much money. Examples of this are government, municipal and railroad bonds. But a bond is not often given by individuals merely for this purpose. It is usually intended to be, in fact, an obligation to do something else, *on the penalty* of paying so much money if it be not done. This something else may be anything whatever which the obligor may contract to do. All this is contained in an addition, which is written on the same paper immediately after the bond itself; that is, after the words of obligation. And this is called the "Condition" of the bond. It begins with saying, This bond is on the condition following; and then recites the things which the obligor has undertaken to do; and then adds, that if all these things are fully done and performed, then the bond shall be void and of no effect, and otherwise shall remain in full force.

The meaning and effect of all this is, that if the obligor fails, in any respect, to do what the condition recites, then he is bound to pay the money he acknowledges himself, in the bond, bound to pay. But now the law comes in to mitigate the severity of

this contract. And whatever be the sum which the obligor acknowledges himself, in the bond, bound to pay, he is held by the courts to pay to the obligee only that amount which will be a complete indemnification to him for the damage he has sustained by the failure of the obligor to do what the condition recites.

For example: suppose A B makes a bond to C D, acknowledging himself bound to C D in the sum of ten thousand dollars. The condition recites that one E F has been hired by C D as his clerk, and that A B guarantees the good conduct of E F; and if E F does all his duty honestly and faithfully, then the bond is void, and otherwise remains in full force. Then suppose E F to cheat C D out of some money. A B is sued on the bond; C D cannot recover from him, in any event, *more* than the ten thousand dollars; and he will in fact recover from him only so much of this as will make good to C D all the loss he has sustained by E F's misconduct. As the obligee can recover from the obligor only actual compensation for what he loses, it is usual, in practice, to make the penal sum in the bond large enough to cover all the loss that can happen.

There need be no "consideration," alleged or asserted in the bond, or proved, because, in the language of the law, the seal is (or implies) a consideration.

The following forms are those of bonds frequently given; and it will be easy to frame from some one of them any bond that is wanted for other purposes.

(28.)

A Simple Bond, without Condition.

Know all Men by these Presents, That I _____ (*the obligor*) am held and firmly bound unto _____ (*the obligee*) in the sum of _____ lawful money of the United States of America, to be paid to the said _____ or his certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents.

In Testimony Whereof, I _____ have set my hand and seal to this instrument, on the _____ day of _____, in the year of our Lord nineteen hundred and _____.

(Signature.) (Seal.)

Executed and Delivered in Presence of
(Witnesses.)

(29.)

Bond for Payment of Money, with a Condition to That Effect, with Power of Attorney to Confess Judgment Annexed.

Know all Men by these Presents, That I, _____ am held and firmly bound unto _____ in the sum of _____ lawful money of the United States of America, to be paid to the said _____ or his certain attorney, executors, administrators, or assigns: to which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents. Sealed with my seal. Dated the _____ day of _____ in the year of our Lord one thousand nine hundred and _____.

The Condition of this Obligation is such, That if the above bounden _____ his heirs, executors, administrators, or any of them shall and do well and truly pay, or cause to be paid, unto the above-named _____ his certain attorney, executors, administrators, or assigns, the just sum of _____ dollars, on or before the _____ day of _____, 19____, without any fraud or further delay, then the above obligation to be void, otherwise to be and remain in full force and virtue.

(Signatures.) (Seals.)

Sealed and Delivered in the Presence of
To _____, Esq., Attorney of the Court of Common Pleas, at _____ in the County of _____, in the State of _____, or to any other Attorney of the said Court, or of any other Court, there or elsewhere.

Whereas, I _____ (*the obligor*) in and by a certain obligation bearing even date herewith, do stand bound unto _____ (*the obligee*) in the sum of _____ lawful money of the United States of America, conditioned for the payment of _____, on or before the _____ day of _____ 19____.

These are to desire and authorize you, or any of you, to appear for me, my heirs, executors, or administrators, in the said court or elsewhere, in an action of debt, there or elsewhere brought, or to be brought, against me, or my heirs, executors, or administrators, at the suit of the said _____ (*the obligee*) _____ executors, administrators, or assigns, on the said obligation, as of any term or time past, present, or any other subsequent term or time there or elsewhere to be held, and confess judgment thereupon against me, or my heirs, executors, or administrators, for the sum of _____ dollars lawful money of the United States of America, debt, besides costs of suit, in such manner as to you shall seem meet: and for your, or any of your so doing, this shall be your sufficient warrant. And I do hereby for myself, and for my heirs, executors, and administrators, remise, release, and forever quitclaim unto the said _____ (*the obligee*) or his certain attorney, executors, administrators, and assigns, all and all manner of error and errors, misprisions, misentries, defects, and imperfections whatever, in the entering of the said judgment, or any process or proceedings thereon or thereto, or any wise touching or concerning the same.

In Witness Whereof, I, the said _____ have hereunto set my hand and seal, the _____ day of _____, in the year of our Lord one thousand nine hundred and _____.

(Signatures.) (Seals.)

Sealed and Delivered in the Presence of

(30.)

Bond with Sureties for Conveyance of a Parcel of Land.

Know all Men by these Presents, That we, _____ as principals, and _____ as sureties are holden and stand firmly bound unto _____ in the sum of _____ dollars, to the payment of which to the said _____ or his executors, administrators, or assigns, we hereby jointly and severally bind ourselves, our heirs, executors, and administrators.

The Condition of this obligation is such that whereas the said obligors have agreed to sell and convey unto the said obligee a certain parcel of real estate situated _____ and bounded as follows, namely: _____ The same to be conveyed by a good and sufficient (*warranty or other*) deed of the said obligors, conveying a good and clear title to the same, free from all incumbrances.

And whereas, for such deed and conveyance it is agreed that the said obligee shall pay the sum of _____ dollars, of which _____ dollars are to be paid in cash upon the delivery of said deed, and the remainder by the _____ note of the said obligee, bearing interest at _____ per cent. per annum, payable semi-annually, and secured by a power of sale mortgage in the usual form upon the said premises, such note to be _____ (*describe the note*) _____

Now, therefore, if the said obligors shall upon tender by the said obligee of the aforesaid cash, note and mortgage, at any time within _____ from this date, deliver unto the said obligee a good and sufficient deed as aforesaid, then this obligation shall be void, otherwise it shall be and remain in full force and virtue.

In Witness Whereof, We hereunto set our hands and seals this _____ day _____ A. D. 19____

Signed and Sealed in Presence of

Bonds for conveyance of land should be acknowledged for record in the same manner as deeds.

(31.)

Bond for a Deed.

Know all Men by these Presents, That I, _____ (*name of the obligor*) of the County of _____ and State of _____ am held and firmly bound to _____ (*name of the obligee*) of the County of _____ and State of _____ in the sum of _____ dollars, to be paid to said _____ (*name of obligee*) or his executors, administrators, or assigns, to the payment whereof I bind myself, my heirs, executors, and administrators, firmly by these presents. Sealed with my seal and dated the _____ day of _____ A. D. 19____

The Condition of this obligation is such that if I the said _____ (*name of the obligor*) upon payment of _____ dollars, and interest thereon, on or before the _____ day of _____ 19____, as agreed and promised by said _____ (*name of the obligee*) agreeably to his promissory note, dated _____ 19____, and made payable as follows, to wit: (*here set forth the note.*

If there be no note from the obligee, omit this part), shall convey to said _____ (*name of the obligee*) or his heirs, executors, or assigns, forever, the following described real estate, situate, lying, and being in the County of _____ and State of _____ to wit: (*here describe the land or premises granted*), by deed or deeds in common form, duly executed and acknowledged, and with release of dower and homestead, and in the meantime shall permit said _____ (*name of the obligee*) to occupy and improve said premises for his own use, then this obligation shall be void, otherwise it shall remain in full force.

(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in the Presence of

(32.)

Bond for a Deed in Another Form.

Know all Men by these Presents, That I, _____, of _____ in the County of _____ and State of _____ held and firmly bound unto _____ of _____ in the County of _____ and State of _____ in the penal sum of _____ dollars, for the payment of which sum, well and truly to be made to said _____, his heirs, executors, and administrators, I bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal and dated this _____ day of _____ A. D. 19____.

The Condition of the above Obligation is such, That whereas the said _____ this day has agreed to purchase from me a certain parcel of land situated in _____, and bounded and described as follows, viz: _____ and whereas the said _____ has agreed to pay for said premises, on or before _____ the sum of _____ dollars in manner following, viz:— (*here state the manner and terms of payment*).

Now, therefore, if upon tender to me, on or before _____ of the sum of _____ so agreed to be paid, and the performance by the said _____ of all the other conditions of sale by him to be performed as aforesaid, I shall convey said premises to him in fee simple by good and sufficient warranty deed with release of dower and homestead, then this obligation to be void, otherwise to remain in full force and virtue.

Witness my hand and seal, etc.

(33.)

Bond to Secure an Option for Purchase of Land.

Know all Men by these Presents, That I (*name of obligor*), of _____ in the County of _____ and State of _____, am holden and firmly bound unto (*name and residence of obligee*) in the sum of _____ dollars, to be paid to the said _____ or his executors, administrators or assigns, to the payment whereof I bind myself, my heirs, executors and administrators firmly by these presents. Sealed with my seal and dated the _____ day of _____ A. D. 19____.

The Condition of this obligation is such that if I, the said _____, upon payment or tender to me on or before the _____ day of _____ 19____, of

the sum of _____ dollars, shall convey to the said _____, or his heirs, executors, or assigns, forever, in fee simple, the following described real estate, situate, lying and being in _____ in _____ in the County of _____ and State of _____, to wit: (*here describe the premises to be conveyed*) by good and sufficient warranty deed in common form with release of dower and homestead, duly executed and acknowledged, then this obligation shall be void, otherwise it shall remain in full force and virtue.

(Signature.) (Seal.)

(34.)

Bond of a Treasurer of a Corporation, with Sureties.

Know all Men by these Presents, That we, _____ of _____, as principal, and _____ and _____ both of said _____, as sureties, are holden and stand bound unto the _____, a corporation duly established under the laws of the State of _____, in the sum of _____ dollars, to the payment of which to the said corporation, its successors or assigns, we hereby jointly and severally bind ourselves, our heirs, executors and administrators.

Whereas the said _____ (*principal*) has been elected treasurer of the above named corporation for the period of one year from the _____ day of _____ 19____, and whereas the said _____ may hereafter be reelected to or continue in such office for a further period:

Now the condition of this obligation is such that if the said _____ shall at all times hereafter, as long as he shall continue in said office, both during the term for which he has been elected, and during such further term as he may continue to hold said office, whether by reelection or otherwise, faithfully, honestly, and diligently perform and discharge the duties of said office, and shall, whenever required, duly and faithfully account to said corporation, its successors or assigns, for all moneys, goods, and property whatsoever, for or with which he, the said _____, may be in anywise accountable or chargeable to said corporation, and shall, when required, pay or deliver all such moneys, goods, and property to said corporation, its successors or assigns, then this obligation shall be void; otherwise the same shall remain in full force and effect.

In witness, etc.

(35.)

Bond of a Clerk to a Firm Employing Him.

Know all Men by these Presents, etc., (*as in previous form*).

Whereas, the above named _____ (*obligees*) have agreed to take the said _____ into their employ as clerk upon his entering with said sureties into a bond in the above mentioned sum of _____ dollars, with such condition as is hereunder written, for the faithful service by the said _____ as clerk: now the condition of this obligation is such that if the said _____ shall faithfully discharge his duties as clerk, or if the said principal and surety or either of them, their or either of their heirs, executors or administrators shall at all times hereafter keep indemnified the said (*employees*) their executors, administrators and assigns against all losses, damages and expenses

which they may pay or sustain by reason of their taking the said _____ into their employ, or by reason of any act, embezzlement, mismanagement, neglect or default of or by the said _____, while in the employ of the said _____, or otherwise, then, in either of said cases the above written bond shall be void; otherwise the same shall remain in full force and effect.

In Witness Whereof, etc.

(36.)

Bond by Contractor for Performance of Building Contract.

Know all Men by these Presents, etc.

Whereas the said _____ (*principal*) has by agreement in writing, dated the _____ day of _____, 19____, and made between said _____ (*principal*) of the one part, and the said _____ (*obligee*) of the other part, entered into a contract for building a house in _____: Now the condition of this obligation is such that if the said _____, his executors or administrators, shall duly perform and observe all the stipulations and agreements contained in the said contract, and on his and their part to be performed and observed, and so that any alteration which may be made by agreement between the said _____ (*principal*) and the said _____ (*obligee*) his executors and administrators in the terms of said contract, or the nature of the work to be done thereunder, or the giving by the said _____ (*obligee*) his executors or administrators, of any extension of time for performing the said contract, or of any of the stipulations therein contained, and on the part of said _____ to be performed, or any other forbearance on the part of said _____ (*obligee*), his executors or administrators, to the said _____, his executors or administrators, shall not in any way release the said _____ (*sureties*), or either of them, or either of their heirs, executors or administrators, from their or his liability under the above written bond, then, etc.

CHAPTER VIII.

ASSIGNMENTS.

THE word "assign" usually occurs in almost all forms of transfer and conveyance; but there are certain instruments to which the name of "Assignment" is more particularly given. They are instruments by which other instruments or debts or obligations, as bonds, judgments, wages, and the like, are transferred. Sometimes they are written on the backs of, or elsewhere on the same paper with, the instruments to be transferred by the assignment. Some of these, as assignments of deeds of grant and conveyance, of mortgages, of leases, will be given in the

chapters which treat of those topics. Here are given such forms as will enable one to make an assignment for any of the purposes for which assignments are usually made.

(37.)

Brief Form of an Assignment to Be Indorsed on a Note, or Any Similar Promise or Agreement.

I Hereby, for value received, assign and transfer the within written (*or the above written*) _____, together with all my interest in and all my rights under the same, to (*name of the Assignee*).

(*Signature.*)

(38.)

A General Assignment, with Power of Attorney.

Know all Men by these Presents, That I _____ for value received, have sold, and by these presents do grant, assign, and convey unto _____ (*name of the assignee and description of the things assigned*).

To Have and to Hold the same unto the said _____ his executors, administrators, and assigns forever, to and for the use of the said _____ hereby constituting and appointing him my true and lawful attorney irrevocable in my name, place, and stead, for the purposes aforesaid, to ask, demand, sue for, attach, levy, recover, and receive all such sum and sums of money which now are, or may hereafter become due, owing and payable for or on account of all or any of the accounts, dues, debts, and demands above assigned; I giving and granting unto the said attorney, full power and authority to do and perform all and every act and thing whatsoever requisite and necessary, as fully, to all intents and purposes, as I might or could do, if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that the said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In Witness Whereof, I have hereunto set my hand and seal the _____ day of _____, one thousand nine hundred and _____.

(*Signature.*) (*Seal.*)

Executed and Delivered in the Presence of

(39.)

Assignment of a Bond.

Know all Men by these Presents, That I, _____ (*the obligee, or the assignee of the obligee*), in the hereunto annexed obligation named, for and in consideration of the sum of _____ lawful money of the United States of America, unto me well and truly paid by _____ at the time of the execution hereof, the receipt whereof I hereby acknowledge, have assigned, transferred, and set over, and by these presents do assign, transfer, and set over unto the said _____ (*assignee*) his executors, administrators, and assigns,

to and for his and their only proper use and behoof, the said hereunto annexed obligation, which is given and executed by _____ to _____ bearing date the _____ day of _____ Anno Domini 19____, to secure the payment of the sum of _____ with lawful interest therein expressed, and all moneys, both principal and interest, thereon due and payable, or hereafter to grow due and payable, with the warrant of attorney to the said obligation annexed; together with all rights, remedies, incidents, and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and all _____ right, title, and interest therein.

In Witness Whereof, I, the said _____, have hereunto set my hand and seal, this _____ day of _____ Anno Domini one thousand nine hundred and _____

Sealed and Delivered in the presence of us,

(40.)

Assignment of a Bond, with Power of Attorney, and a Covenant.

Know all Men by these Presents, That I, _____ of the first part, for and in consideration of the sum of _____ lawful money of the United States of America, to me in hand paid by _____ of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, sold, and assigned, and by these presents do bargain, sell, and assign, unto the said party of the second part, his executors, administrators, and assigns, a certain written bond or obligation and conditions thereof, bearing date the _____ day of _____ one thousand nine hundred and _____, executed by _____, and all sum and sums of money due, and to grow due thereon; and I, the said party of the first part do covenant with the said party of the second part, that there is now due on the said bond or obligation, according to the conditions thereof, for principal and interest, the sum of _____ and do hereby authorize the said party of the second part, in my name to ask, demand, sue for, recover, receive, and enjoy, the money due and that may grow due thereon, as aforesaid.

In Witness Whereof, etc.

(41.)

Assignment of a Judgment in the Form of an Indenture.

This Indenture, made the _____ day of _____ one thousand nine hundred and _____ between _____ (*assignor*) of the first part, and _____ (*assignee*) of the second part.

Whereas, The said party of the first part on the _____ day of _____, one thousand nine hundred and _____ recovered by judgment in the (*name of court*) against one _____ the sum of _____ dollars.

Now this Indenture Witnesseth, That the said party of the first part, in consideration of _____ to him duly paid, has sold and by these presents does assign, transfer, and set over unto the said party of the second part, and his assigns, the said judgment and all sum and sums of money that may be had or obtained by means thereof, or on any proceedings to be had

thereupon. And the said party of the first part does hereby constitute and appoint the said party of the second part, and his assigns, his true and lawful attorneys, irrevocable, with power of substitution and revocation, for the use and at the proper costs and charges of the said party of the second part, to ask, demand, and receive, and to sue out executions, and take all lawful ways for the recovery of the money due or to become due on the said judgment; and on payment to acknowledge satisfaction, or discharge the same; and attorneys one or more under him for the purpose aforesaid, to make and substitute, and at pleasure to revoke; hereby ratifying and confirming all that his said attorney or substitute shall lawfully do in the premises. And the said party of the first part does covenant, that there is now due on the said judgment the sum of _____ and that he will not collect or receive the same, or any part thereof, nor release or discharge the said judgment, but will own and allow all lawful proceedings therein, the said party of the second part saving the said party of first part harmless of and from any costs in the premises.

In Testimony Whereof, The party of the first part has hereunto set his hand and seal the day and year first above written.

(Seal.)

Scaled and Delivered in the Presence of

(42.)

Assignment of Wages, with Power of Attorney.

Know all Men by these Presents, That I, _____ (*name of the worker*), County of _____ and State of _____, in consideration of _____ to me paid by _____ of _____ the receipt whereof I do hereby acknowledge, do hereby assign and transfer to said _____ all claims and demands which I now have, and all which, at any time between the date hereof and the _____ day of _____ next, I may and shall have against _____ for all sums of money due, and for all sums of money and demand which, at any time between the date hereof and the said _____ day of _____ next, may and shall become due to me, for services as _____ to have and to hold the same to the said _____ his executors, administrators, and assigns forever.

And I, _____, do hereby constitute and appoint the said _____ and his assigns to be my attorney irrevocable in the premises, to do and perform all acts, matters, and things touching the premises, in the like manner to all intents and purposes as I could if personally present.

In Witness Whereof, etc.

(Seal.)

Signed, Scaled, and Delivered in presence of

CHAPTER IX.

SALES OF PERSONAL PROPERTY.

SECTION I.

WHAT CONSTITUTES A SALE.

It is important to distinguish carefully between a sale and an agreement for a future sale. This distinction is sometimes overlooked; and hence the phrase "an executory contract of sale," that is, a contract of sale which is to be executed hereafter, has come into use; but it is not quite accurate to speak of this as if it were a sale. Every actual sale is an executed contract, although payment or delivery may remain to be made. There may be an executory contract *for* sale, or a bargain that a future sale shall be made; but such a bargain is not a present sale; nor does it confer upon either party the rights or the obligations which grow out of the contract of sale.

A sale of goods is the exchange thereof for money. More precisely, it is the transfer of the property in goods from a seller to a buyer, for a price paid, or to be paid, in money. It differs from an exchange, in law; for that is the transfer of chattels for other chattels; while a sale is the transfer of chattels for money, which is the representative of all value.

Here we must pause to speak of the *legal* meaning of the word "property." It is seldom or never used in the law as it is in common conversation, to mean the things themselves which are bought, or sold, or owned. Because in law it means the *ownership* of the things, and not the things themselves.

If a bargain transfers the property in (which means the ownership of) the thing to another person for a price, it is a sale; and if it does not transfer the property, it is not a sale; and, on the other hand, if it be not a sale, it does not transfer the property. As soon as a thing is *sold* the buyer *owns* it, wherever it may be. And to constitute a sale at common law, all that is necessary is the agreement of competent parties that the property in (or ownership of) the subject-matter shall then pass from the seller to the buyer for a fixed price.

The sale is made when the agreement is made. The completion of the sale does not depend upon the delivery of the goods by the seller, nor upon the payment of the price by the buyer. By the mutual assent of the parties to the terms of the sale, the buyer acquires at once the property and all the rights and liabilities of property; so that, in case of any loss or depreciation of the articles purchased, the buyer will be the sufferer; and he will be the gainer by any increase in their value.

It is, however, a presumption of the law, that the sale is to be immediately followed by payment and delivery, unless otherwise agreed upon by the parties. If, therefore, nothing appears but a proposal and an acceptance, and the vendee departs without paying or tendering the price, the vendor may elect to consider it no sale, and may, therefore, if the buyer comes at a later period and offers the price and demands the goods, refuse to let him have them. But a credit may be agreed on expressly, and the seller will be bound by it; and so he will be if the credit is inferred or implied from usage or from the circumstances of the case. And if there be a delivery and acceptance of the goods, or a receipt by the seller of earnest, or of part payment, the legal inference is that both parties agree to hold themselves mutually bound by the bargain. Then the buyer has either the credit agreed upon, or such credit as from custom or the nature or circumstances of the case is reasonable. But neither delivery, nor earnest, nor part-payment, is essential to the completion of a contract of sale. They only prevent the seller from rescinding the contract of sale without the consent of the purchaser. Their effect upon sales under the provisions of the Statute of Frauds will be considered in the chapter on that subject. It may also be said that no one can be made to buy of another without his own assent. Thus, if A sends an order to B for goods, and C sends the goods, he cannot sue for the price, if A repudiates the sale, although C had bought B's business.

The seller (if no delivery with credit for the price is agreed on) has a right to retain possession of the property sold until the price is paid. This right is called a *lien*, which means the right of retaining possession of property until some charge upon it, or some claim on account of it, is satisfied. It rests, therefore, on possession. Hence the seller (and every other person who has a lien) loses it by voluntarily parting with the posses-

sion, or by a delivery of the goods. And it is a delivery for this purpose, if he delivers a part without any purpose of severing that part from the remainder; or if he make a symbolical delivery which vests this right and power of possession in the buyer, as by the delivery of the key of a warehouse in which they are locked up.

If the seller delivers the goods to the buyer, as he thereby loses his lien, he cannot afterwards, by virtue of this lien, retake the goods and hold them. But if the delivery was made with an express agreement that non-payment of the price should re-vest the property in the seller, this agreement may be valid, and the seller can reclaim the goods from the buyer if the price be not paid.

If the buyer neglect or refuse to take the goods and pay the price within a reasonable time, the seller may resell them on notice to the buyer, and look to him for the deficiency by way of damages for the breach of the contract. The seller, in making such resale, acts as agent or trustee for the buyer; and his proceedings will be regulated and governed by the rules usually applicable to persons acting in those capacities; and the principal one of these is, that he will be held to due care and diligence, and to perfect good faith.

Certain consequences flow from the rules and principles already stated which should be noticed. Thus, if the party to whom the offer of sale is made accepts the offer, but still refuses or neglects to pay the price, and there are no circumstances indicating a credit, or otherwise justifying the refusal or neglect, the seller may, as we have said, disregard the acceptance of his offer, and consider the contract as never made, or as rescinded. It would, however, be proper and prudent on the part of the seller expressly to demand payment of the price before he treated the sale as null; and a refusal or neglect would then give him at once a right to hold and treat the goods as his own. So, too, if the seller unreasonably neglected or refused to deliver the goods sold, and especially if he refused to deliver them, the buyer thereby acquires the right to consider that no sale was made, or that it has been avoided (or annulled). But neither party is bound to exercise the right thus acquired by the refusal or neglect of the other, but may consider the sale as complete; and the seller may sue the buyer for non-payment, or the buyer may sue the seller for non-delivery.

If the seller has merely the right of possession, as if he hired the goods; or if he has the possession only, as if he stole them, or found them, he cannot sell them and give good title to the buyer against the owner; and the owner may therefore recover them even from an honest purchaser who was wholly ignorant of the defect in the title of him from whom he bought them. This follows from the rule above stated, that only he who has in himself a right of property can sell a chattel, because the sale must transfer the right of property from the seller to the buyer. The only exception to the above rule is where money, or negotiable paper transferable by delivery (which is considered as money), is sold or paid away. In either case, he who takes it in good faith, and for value, from a thief or finder, holds it by good title. But if the owner once sold the thing, although he was deceived and induced to part with his property through fraud, he cannot reclaim it from one who in good faith buys it from the fraudulent party.

If anything remains to be done by the seller, to or in relation to the goods sold, for their ascertainment, identification, or completion, the property in the goods does not pass until that thing is done, and there is as yet no completed sale. Therefore, if there be a bargain for the sale of specific goods, but there remains something material which the seller is to do to them, and they are casually burnt or stolen, the loss is the seller's, because the property (or ownership) had not yet passed to the buyer.

So, if the goods are a part of a large quantity, they remain the seller's until selected and separated; and even after that, until recognized and accepted by the buyer, unless it is plain from words or circumstances that the selection and separation by the buyer are intended to be conclusive upon both parties.

If repairing or measuring or counting must be done by the seller before the goods are fitted for delivery or the price can be determined, or their quantity ascertained, they remain, until this be done, the seller's. And where part is measured and delivered this part passes to the vendee, but the portion not so set apart does not. But if the seller delivers them and the buyer accepts them, and any of these acts remain to be done, these acts will not be considered as belonging to the contract of sale, for that will be regarded as completed, and the ownership of the goods

will have passed to the buyer, and these acts will be taken only to refer to the adjustment of the final settlement as to the price.

Thus, a purchaser offers a nurseryman a dollar apiece for two hundred out of a row of two thousand trees, which are all alike, and the offer is accepted. This is no sale, because any two hundred may be delivered, and therefore the property or ownership of any specific two hundred does not pass. But if the purchaser or seller had said the first two hundred in the row, or the last, or every third tree, or otherwise indicated the specific trees, there would have been a sale, and by the sale those specific trees would have become at once the trees of the buyer. The seller would dig up and deliver them as the buyer's trees, and if they were burned up by accident an hour after the sale, and before digging, the buyer would lose the trees. If not specified, however, even if they were paid for, they remain the property of the nurseryman, because, instead of an actual sale, there is only a bargain that he will select two hundred from the lot, and take up and deliver them. And if they are destroyed before delivery, this is the loss of the nurseryman.

Moreover, it is to be noticed that a contract for a future sale to take place either at a future point of time, or when a certain event happens, does not, when that time arrives, or on the happening of the event, become of itself a sale, transferring the property. The party to whom the sale was to be made does not then acquire the property, and cannot by tendering the price acquire a right to possession; but he may tender the price, or whatever else would be the fulfillment of his obligation, and then sue the owner for his breach of contract, if he will not deliver the goods. But the property in the goods remains in the original owner.

For the same reason that the property in the goods must pass by a sale, there can be no actual sale of any chattel or goods which have no existence at the time. It may, as we have seen, be a good contract for a future sale, but it is not a present sale. Thus, in contracts for the sale of articles yet to be manufactured, the subject of the contract not being in existence when the parties enter into their engagement, no property passes until the chattel is in a finished state, and has been specially appropriated to the person giving the order, and approved and accepted by him.

As there can be no sale unless of a specific thing, so there is no sale but for a price which is certain, or which is capable of being made certain by a distinct reference to a certain standard.

SECTION II.

DELIVERY AND ITS INCIDENTS.

WHEN a sale is effected, the buyer has an immediate right to the possession of the goods, as soon as he pays or tenders the price; or at once, without payment, if the sale be on credit. And the seller is bound to deliver the goods.

What is a sufficient delivery is sometimes a question of difficulty. In general, it is sufficient, if the goods are placed in the buyer's hands or his actual possession, or if that is done which is the equivalent of this transfer of possession. Some modes and instances of delivery we have already seen. We add, that if the goods are landed on a wharf alongside of the ship which brings them, with notice to the buyer, or knowledge on his part, this may be a sufficient delivery, if usage, or the obvious nature of the case, make it equivalent to actually giving possession. And usage is of the utmost importance in determining questions of this kind.

In general, the rule may be said to be, that that is a sufficient delivery which puts the goods within the actual reach or power of the buyer, with immediate notice to him, so that there is nothing to prevent him from taking actual possession.

When, from the nature or situation of the goods, an actual delivery is difficult or impossible, as in case of a quantity of timber floating in a boom, slight acts, as touching the timber, or even going near it and pointing it out, are sufficient to constitute a delivery, if they sufficiently indicate the transfer of possession. So if the property which is the subject of the sale is at sea, the indorsement and delivery of the bill of lading, or other instrument of title, is sufficient to constitute a delivery, and by such indorsement and delivery of the bill of lading the property in the goods immediately vests in the buyer; and he can transfer this to one who buys of him, by his own indorsement and delivery of the bill of lading. Where goods at sea are sold, the seller should send or deliver the bill of lading to the buyer within a reasonable time, that he may have the means of offering the goods in the

market. And it has been held that a refusal of the bill of lading authorized the buyer to rescind the sale.

Until delivery, the seller is bound to keep the goods with ordinary care, and is liable for any loss or injury arising from the want of such care or of good faith. But if he exercises ordinary care and diligence in keeping the commodity, he is not liable for any loss or depreciation of it, unless this arises from some defect which he has warranted not to exist. Thus, in a case in New York, A sold to B a certain quantity of beef, B paying the purchase-money in full; and it was agreed between them that the beef should remain in the custody of A until it should be sent to another place. Some time after, B received a part, which proved to be bad, and the whole was found, on inspection, to be unmerchantable. The court held that, as the beef was good at the time of its sale, the vendee (or buyer) must bear the loss of its subsequent deterioration.

If the buyer lives at a distance from the seller, the seller must send the goods in the manner indicated by the buyer. If no directions are given, he must send them in such a way as usage, or in the absence of usage, as reasonable care would require. And generally all customary and proper precautions should be taken to prevent loss or injury in the transit. If these are taken, the goods are sent at the risk of the buyer, and the seller is not responsible for any loss. But he is responsible for any loss or injury happening through the want of such care or precaution. And if he sends them by his own servant, or carries them himself, they are in his custody, and generally at his risk, until delivery. But if the buyer distinctly indicates the way or means by which he wishes that the goods should be sent to him, as by such a carrier, or such a line, if the seller complies with his directions, and exercises ordinary care over the goods until they are delivered to the person or line so pointed out, his responsibility ends with this delivery, in the same manner as it would if he delivered the goods into the hands of the owner.

This question of delivery has a very great importance in another point of view; and that is, as it bears upon the honesty, and therefore the validity, of the transaction. As the owner of goods ought to have them in his possession, and as a transfer of possession usually does, and always should, accompany a sale, the want of this transfer is an indication, more or less strong,

that the sale is not a real one, but a mere cover. The prevailing rule may be stated thus: Delivery is not essential to a sale at common law; but if there is no delivery, and a third party, without knowledge of the previous sale, purchases the same thing from the seller, he gains an equally valid title with the first buyer; and if he completes this title by acquiring possession of the thing before the other, he can hold it against the other. So, also, unless delivery or possession accompany the transfer of the right of property, the things sold are subject to attachment by the creditors of the seller. And if the sale be completed, and nevertheless no change of possession takes place, and there is no certain and adequate cause or justification of the want or delay of this change of possession, the transaction will be regarded as fraudulent and void in favor of a third party, who, either by purchase or by attachment, acquires the property in good faith, and without a knowledge of the former sale. This fact, that the thing sold remained in the possession of the seller, might be explained, and if shown to be perfectly consistent with honesty, and to have occurred for good reasons, and especially if the delay in taking possession was brief, the title of the first buyer would be respected.

If goods are sold in a shop or store, separated, and weighed or numbered, if that be necessary, and put into a parcel, or otherwise made ready for delivery to the buyer, in his presence, and he request the seller to keep the goods for a time for him, this is so far a delivery as to vest the property in the goods in the buyer, and the seller becomes the *bailee* of the buyer. And if the goods are lost while thus in the keeping of the seller, without his fault, it is the loss of the buyer. (In law the word *bail* means "to deliver." Thus a "bailor" is one who delivers a thing to another; the "bailee" is the party to whom it is delivered; and "bailment" is the delivery. The "bail" of a party who is arrested, is he or they to whom the arrested person is delivered or given up, on their agreement that he shall be forthcoming when required by law.)

In a contract of sale there is sometimes a clause providing that a mistake in description, or a deficiency in quality or quantity, shall not avoid the sale, but only give the buyer a right to deduction or compensation. But if the mistake or defect be great and substantial, and affects materially the availability of the thing

for the purpose for which it was bought, the sale is nevertheless void, for the thing sold is not that which was to have been sold.

If the buyer knowingly receives goods so deficient or so different from what they should have been that he might have refused them, he will be held to have waived the objection, and to be liable for the whole price; unless he can show a good reason for not returning them, as in the case of materials innocently used before discovery of the defects, or the like. Thus, where a man bought a chandelier warranted sufficient to light a certain room, and kept it six months, the court did not permit him to return it and refuse payment, although it was not what it had been warranted to be. Sometimes two or three months, or even less, is held too long a keeping to permit a subsequent return. But though the buyer cannot return the thing, yet, when the price is demanded, he may set off whatever damages he has sustained by the seller's breach of contract, and the seller can recover only the value to the buyer of the goods sold, even if that be nothing. But a long delay or silence may imply a waiver of even this right on the part of the buyer.

One who orders many things at one time, and by one bargain, may generally refuse to receive a part without the rest; but if he accepts any part, he severs that part from the rest, and rebuts (or removes) the presumption that it was an entire contract; the buyer will then be held as having given a separate order for each thing, or part, and as therefore bound to receive such parts as are tendered, unless some distinct reason for refusal attaches to them. If many several things are bought at one auction, but by different bids, and especially if the name of the buyer be marked against each, there is a separate sale to him of each one, and it is independent of the others; so that he must take and pay for any one or more, although the others are not what they should be, or cannot be had. If, however, it could be shown by the nature of the case, or by evidence, that the things were so connected that one was bought entirely for the sake of the other, he would not be obliged to take the one unless he could have the other. This rule applies also when the things sold are lots of land. Indeed, the general rule may be stated thus. The question whether it is one contract, so that the buyer shall not be bound to receive any part unless the whole be tendered to him, will be determined by ascertaining from all the facts whether the

parts so belong together that it may reasonably be supposed that none would have been purchased if the whole had not been purchased, or if any part could not have been purchased.

The buyer may have, by the terms of the bargain, the right of redelivery. For sales are sometimes made upon the agreement that the purchaser may return the goods within a fixed, or within a reasonable time. He may have this right without any condition, and then has only to exercise it at his discretion. But he may have the right to return the thing bought, only if it turns out to have, or not to have, certain qualities; or only upon the happening of a certain event. In such case the burden of proof is on him to show that the circumstances exist which are necessary to give him this right. In either case the property vests in the buyer at once, as in ordinary sales; but subject to the right of return given him by the agreement. If he does not exercise his right within the agreed time, or within a reasonable time if none be agreed upon, the right is wholly lost, the sale becomes absolute, and the price of the goods may be recovered in an action for goods sold and delivered. And if during the time the buyer so misuse the property as to materially impair its value, he cannot tender it back, but is liable for the price.

SECTION III.

CONTRACTS VOID FOR ILLEGALITY OR FRAUD.

As the law will not compel or require any one to do that which it forbids him to do, no contract can be enforced at law which is tainted with illegality. It may, however, be necessary to consider whether the contract be entire or separable into parts, and whether it is wholly or partially illegal. If the whole consideration, or any part of the consideration, be illegal, the promise founded upon it is void, whether the promise is legal or not. But if the consideration is legal, and the promise is in part legal and in part illegal, it is valid for the legal part and may be enforced for that part. Thus, if a master of a vessel agreed to smuggle goods, and in consideration of his doing so the owner promised to pay him one-fourth of his profits, and also to advance twenty dollars a month to his family during a certain time, the master could enforce no part of this promise, and recover no damages for any breach of it, because the consideration

is illegal. But if, for one thousand dollars paid, the receiver agreed to sell and deliver a quantity of merchandise, and also to assist the buyer in some contemplated fraud, he would be bound to sell and deliver the goods, because the consideration was legal, and this part of the promise was legal, but not to assist in the fraud, because this part of the promise was illegal. I mean to say, that if a whole promise, or any part of a promise that cannot be severed into substantial and independent parts, is illegal, the whole promise is void. But if the consideration is legal, and the promise is legal in part and illegal in part, and that part of the promise which is legal can be severed from that part which is illegal, and then be a substantial promise having a value of its own, this legal part can be enforced. For further remarks upon this subject, however, I refer to the previous chapter on Consideration.

Formerly, an agreement to sell at a future day goods which the promisor had not at the time, and had not contracted to buy, and had no notice or expectation of receiving by consignment, was considered open to the objection that it was merely a wager, and therefore void. But later cases have admitted it to be a valid contract.

We have already said, in a preceding chapter, that fraud vitiates and avoids every contract and every transaction. Hence, a wilfully false representation by which a sale is effected; or a purchase of goods with the design of not paying for them; or hindering others from bidding at auction by wrongful means; or selling at auction, and providing by-bidders to run the thing up fraudulently; or selling "with all faults," and then purposely concealing and disguising them, as when a man advertised a ship for sale at auction "with all faults," but purposely put her in a situation where an important fault could not be easily detected; or any similar act, will avoid a sale. No title or right passes by such sale to the fraudulent party; but the innocent party, whether buyer or seller, may waive the fraud, and insist that the fraudulent party shall not take advantage of his own fraud to avoid the sale.

A buyer who is imposed upon by a fraud, and therefore has a right to annul the sale, must exercise this right as soon as may be after discovering the fraud. He does not lose the right neces-

sarily by every delay, but certainly does by any considerable and unexcused delay.

A seller may rescind and annul a sale if he were induced to make it by fraud. But he may waive the right and sue for the price. If, however, the fraudulent buyer gets the goods on a credit, and the seller sues for the price before the credit expires, this suit is a confirmation of the whole sale, including the credit; or rather it is an entire waiver of his right to annul the sale, and the suit cannot be maintained until the credit has wholly expired.

If a party who has been defrauded by any contract brings an action to enforce it, this is a waiver of his right to rescind, and a confirmation of the contract. Or if, with knowledge of the fraud, he offers to perform the contract on conditions which he had no right to exact, this has been held so effectual a waiver of the fraud that he cannot set it up in defense, if sued on the contract.

SECTION IV.

SALES WITH WARRANTY.

A SALE may be with warranty; and this may be general, or particular and limited. A general warranty does not extend to defects which are known to the purchaser, or which are open to inspection and observation, unless the purchaser is at the time unable to discover them readily, and relies rather upon the knowledge and warranty of the seller. A warranty may also be either express or implied. It is *not* implied by the law generally merely from a full, or, as it is called, a sound price. The rule of law, *caveat emptor* (*let the buyer take care*), prevents this. But this rule never applies to cases of fraud. As a general rule, however, mere silence on the part of the seller is not fraud; but the usage of the trade will be considered, and if that require a declaration of certain defects whenever they exist, the absence of such a declaration is a warranty against such defects. Mere declarations of opinion are not a warranty. Thus, in England, an action was brought on a warranty that certain goods were fit for the China market. The plaintiff produced a letter from the defendant, saying that he had goods fit for the China market, which he offered to sell cheap. But the court held that such a

letter was not a warranty, but merely an invitation to trade, it not having any specific reference to the goods actually bought by the plaintiff.

If these declarations are intended to deceive, and have that effect, they may avoid the sale for fraud. And affirmations of quantity or quality, which are made pending the negotiations for sale with a view to procure a sale, and have that effect, will be regarded as a warranty; thus, in New York, it was held that a representation made by a vendor, upon a sale of flour in barrels, that it was in quality superfine or extra-superfine, and worth a shilling a barrel more than common, coupled with the assurance to the buyer's agent that he might rely upon such representation, was a warranty of the quality of the flour. So in England, where upon the sale of a horse the vendor said to the vendee, "You may depend upon it, the horse is perfectly quiet and free from vice;" this was held to amount to an express warranty that he was quiet and free from vice.

Goods sold by sample are warranted by such sale to conform to the sample; but there is no warranty that the sample is what it appears to be. Thus, in England, there was a sale of five bags of hops, with express warranty that the bulk answered the samples by which they were sold. The sale was in January; at that time the samples fairly answered to the commodity sold, and no defect was at that time perceptible to the buyer. In July following, every bag was found to have become unmerchantable and spoiled, by heating, caused probably by the hops having been fraudulently watered by the grower, or some other person, before they were purchased by the defendant. The seller knew nothing of this fact at the time of sale, and the samples were as much damped as the rest; and it was then impossible to detect it. It was held by the court that there was here no implied warranty that the bulk of the commodity was merchantable at the time of sale, although a merchantable price was given.

A breach of warranty does not always authorize the buyer to return the article sold, unless there be an agreement to that effect, or fraud; but only to sue on the warranty, and recover damages for the breach of it. But if one orders a thing for a special purpose known to the seller, he may certainly return it if it be unfit for that purpose, if he does so as soon as he ascertains its unfitness.

The seller of goods actually in his possession as owner is held to warrant his own title by the fact of the sale. But if the property be not in the possession of the vendor, and there be no assertion of ownership by him, no implied warranty of title arises.

If a thing is ordered for a special purpose, and is supplied, there is an implied warranty that it is fit for that purpose. In one case, the defendant was a dealer in ropes, and represented himself to be a manufacturer of the article. The buyer, a wine-merchant, applied to him for a crane-rope. The seller's foreman went to the buyer's premises, in order to ascertain the dimensions and kind of rope required. He examined the crane and the old rope, and took the necessary admeasurements, and was told that the new rope was wanted for the purpose of raising pipes of wine out of the cellar, and letting them down into the street; when he informed the buyer that a rope must be made on purpose. The seller did not make the rope himself, but sent the order to his manufacturer, who employed a third person to make it. It was held that, as between the parties to the sale, there was an implied warranty that the rope was a fit and proper one for the purpose for which it was ordered. And the seller was held responsible, not only for the rope, which broke, but for a pipe of wine which was thereby lost.

This principle must not be applied to those cases where an ascertained article is purchased, although it be intended for a special purpose. For if the thing itself is specifically selected and purchased, the purchaser takes upon himself the risk of its effecting its purpose. This is illustrated in an English case thus: "If a man says to another, 'Sell me a horse fit to carry me,' and the other sells a horse which he knows to be unfit to ride, he will be liable for the consequences; but if a man says, 'Sell me that gray horse to ride,' and the other sells it, knowing that the buyer will not be able to ride it, that would not make him liable." If he said, "Sell me that gray horse *if* he is fit to ride," and the seller sold it knowing he was not fit, he would be liable.

It has been much discussed whether a bill of sale, describing the article sold, amounts to a warranty that the article conforms to the description. It seems now to be well settled that it does. In a recent Massachusetts case, there was a bill of sale as follows: "H. & Co. bought of T. W. & Co. *two cases of indigo, \$272.*"

The article sold was not indigo, but principally Prussian blue. No fraud was imputed to the seller, and the article was so prepared as to deceive experienced and skilful dealers in indigo. The naked question was presented, whether the bill of sale constituted a warranty that the article sold was *indigo*. And the court held that it did. Here the warranty implied by the bill of sale was as to the *kind of goods*. In another case the bill was, "Sold E. T. H. 2,000 gallons *prime quality winter oil*." The thing sold was oil, and winter oil; but not *prime quality*. And the Court held that the bill of sale amounted to a warranty that it was of *that quality*. In an English case, a vessel was advertised for sale as "copper fastened"; and that was held to be a warranty that she was so fastened according to the usual understanding of merchants.

When provisions are sold merely as merchandise there is no implied warranty of their quality; but it is the general rule that where the sale is for immediate consumption—as in the case of a sale by a market man to a customer—there is an implied warranty that the article is wholesome and fit for food. It is held, however, in Massachusetts that where the article is selected by the purchaser there is no implied warranty, in the absence of proof of knowledge by the vendor that it is unsound. An inn keeper or eaterer who furnishes unwholesome food is liable to any guest who is injured by partaking of it.

SECTION V.

THE SALE OF ONE'S BUSINESS.

SUCH sales are not unfrequent in this country; and the seller always agrees and promises that he will not pursue that trade, business, or occupation again. There are numerous cases, both in English law-books and in our own, which have arisen from bargains of this kind. The law seems now to be settled, that such a contract is wholly void and inoperative, *provided* the seller agrees to give up his business and never resume it again, *at any time or anywhere*; that is, without any limitation of space or time; because it is against the public interest that a man should be permitted to cast himself out from his business or trade for the rest of his life. But the contract is good, if for a

fair consideration the seller agrees not to resume or carry on that business within a certain time, or within certain limits. What these limits must be is not certain. The courts say they must be "reasonable," and made in good faith. A contract not to carry on a business in a certain town would undoubtedly be good. So, we should say, would be a bargain not to do so within a certain State. In one case in Massachusetts, a contract not to use certain machines in any of the United States except *two* (which were Massachusetts and Rhode Island) was held valid, all of the States but two being considered as a sufficiently defined or limited place; but this was unusual. The courts generally would sanction such a bargain, if it were limited to only a part of the United States; as to all New England, for example.

In such a contract, it would be better for the parties to agree upon the amount which the seller should pay by way of damages, if he violated his bargain, because it might be very difficult to prove specific damages; and such agreement, if it were reasonable, would be enforced by law.

Such damages, agreed on beforehand, are called *liquidated damages*. In all cases where damages are demanded, and are not agreed on, they are called *unliquidated damages*, and it is the duty of the jury to determine, from the evidence before them, what damages the injured party has suffered, and what amount would indemnify him.

(43.)

Bill of Sale of Personal Property.

Know all Men by these Presents, That I, _____ (*name of the seller*), of _____, in the county of _____, and State of _____, for and in consideration of the sum of _____ to me in hand well and truly paid, at or before signing, sealing, and delivery of these presents, by _____ (*name of the buyer*) the receipt whereof I do hereby acknowledge, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said _____ (*here specify the property sold*).

To Have and to Hold the said granted and bargained _____ unto the said _____, his heirs, executors, administrators, and assigns, to their only proper use, benefit, and behoof forever, and I, the said _____ vouch myself to be the true and lawful owner of the goods and effects hereby sold, and to have in myself full power, good right, and lawful authority to dispose of the same in manner as aforesaid, and I do, for myself, my heirs, executors, and administrators, hereby covenant and agree to warrant and defend the said _____ (*the goods sold*) unto the said _____, his heirs, executors,

administrators, and assigns, against the lawful claims and demands of all persons whomsoever:

In Witness Whereof, I, the said _____, have hereunto set my hand and seal this _____ day of _____, in the year of our Lord one thousand nine hundred and _____.

Executed and Delivered in Presence of

(44.)

Another Form of Bill of Sale.

Know all Men by these Presents, That I, _____, of _____, in the county of _____, and state of _____, in consideration of _____ dollars to me paid by _____, of said _____, the receipt whereof is hereby acknowledged, do hereby grant, sell, transfer and deliver unto the said _____ the following goods and chattels, namely: etc.

To Have and to Hold all and singular the said goods and chattels to the said _____ and his executors, administrators and assigns, to their own use and behoof forever.

And I Hereby covenant with the said grantee that I am the lawful owner of the said goods and chattels; that they are free from all incumbrances; that I have good right to sell the same as aforesaid; and that I will warrant and defend the same against the lawful claims and demands of all persons.

In Witness, etc.

(45.)

Sale of a Physician's Practice.

Agreement made this _____ day of _____, 19____, between _____ of _____, hereinafter called the vendor, and _____ of _____, hereinafter called the purchaser.

1. Whereas the said vendor has for many years exercised his profession of physician and surgeon at _____ in the county of _____ and state of _____, and is now desirous of retiring from practice at _____ aforesaid, and the said purchaser is desirous of establishing himself as a physician and surgeon at said _____, now, therefore, the said vendor agrees to sell to the said purchaser, who agrees to purchase, the said practice, and the good will and benefits thereof from the _____ day of _____ next, together with all the fixtures, furniture, medical books, surgical and other instruments and apparatus, and all the drugs, medicines, bottles and other things now used therein, for the sum of _____ dollars: In confirmation of which purchase, the purchaser, upon the execution of these presents, has paid the sum of _____ dollars by way of deposit and in part payment of said purchase-money.

2. The said vendor further agrees that, on the payment of the residue of said purchase-money, as hereinafter mentioned, he will fully and absolutely deliver over and assign to the said purchaser, his executors, administrators or assigns, the said practice or business, and the good will thereof, for his

and their own absolute use and benefit; and likewise, the full and uninterrupted possession of the office in which the said practice is now carried on by him, together with the fixtures, furniture, books, instruments, apparatus, and things now used in and relating to the said practice.

3. The said vendor will introduce and recommend the said purchaser to his patients, friends and others, as his successor; and will use his best endeavors to promote and increase the prosperity of the said practice or business.

4. The said vendor will not practice either as a physician or surgeon, or act directly or indirectly as partner or assistant to or with any other physician or surgeon practicing either at _____ aforesaid, or elsewhere, within _____ miles thereof.

5. The said purchaser in consideration of the agreements on the part of the vendor hereinbefore contained, hereby further agrees to pay to him, his executors or administrators, the residue of the purchase-money, being the sum of _____ dollars, by instalments as follows: One-half part thereof on the _____ day of _____ next, upon receiving the full and peaceable possession of the said practice, office, good will, fixtures, furniture, books, and things hereinbefore mentioned, and the remaining half part thereof on the _____ day of _____ next.

In Witness, etc.

(46.)

Conditional Sale of Machinery by Means of a Lease.

Agreement made the _____ day of _____, 19____, between _____ of _____, of the first part, manufacturer, and _____ of _____, of the second part, mill owner. The said parties mutually agree as follows:

1. In consideration of the payments hereby reserved, and of the performance of the conditions and stipulations hereinafter contained, and on the part of the said party of the second part to be performed, the said party of the first part will, on or before the _____ day of _____ next, erect and place in the mill of the party of the second part, situated at _____ in the county of _____ and state of _____, the steam engines, machinery, apparatus and plant particularly described in the schedule hereto annexed, and hereafter called the machinery.

2. The said party of the second part shall hold and be at liberty to use the said machinery for the term of _____ years from the said _____ day of _____ next, at the rent of _____ dollars per annum, payable half-yearly on the _____ day of _____, and the _____ day of _____, in each year during the continuance of said term, such payments making in the aggregate the sum of _____ dollars (*price of the machinery*), the first of such payments to be made in advance on the said _____ day of _____

3. The said party of the second part shall, at his own expense, from time to time, replace and repair all such parts of the said machinery as may be broken, worn out or damaged, and keep the same in every respect in good working order; and he will not, during the said term, remove any part of the said machinery from the building where the same may be erected, without the consent in writing of the said party of the first part, and will not

assign, transfer, underlet, or part with the possession of the same either directly or indirectly.

4. The said party of the second part will punctually pay the rents hereby reserved, and perform all the conditions and stipulations herein contained, and on his part to be performed; and will not do or suffer anything whereby the said machinery or any part thereof shall or may be seized, taken in execution, attached, removed, injured, or destroyed.

5. The said party of the second part shall keep said machinery insured against damage or loss by fire in some office to be approved by the said party of the first part, for at least the sum of _____ dollars, and will pay the premiums for such insurance, and will forthwith deliver to the said party of the first part the policies of such insurance, and the receipts for the premiums which shall become payable therefor.

6. It is hereby expressly declared that the property in said machinery shall remain in the said party of the first part to all intents and purposes; provided, that the said machinery shall become the absolute property of the said party of the second part on the expiration of the said term, and payment of all the rent hereby covenanted to be paid, and all costs, charges, and expenses provided for under this agreement.

7. In case of the bankruptcy of the said party of the second part, or in case he shall assign, transfer or mortgage the said machinery, or any part thereof, or in case he shall make default in performing and observing any of the covenants, conditions, or agreements herein contained, the said aggregate sum of _____ dollars shall become immediately payable to the said party of the first part, and he may, at his option, enter said premises, and every building in which any part of the said machinery may be, and take possession of and remove the said machinery, and may, without the consent of the said party of the second part, sell the same as freely as if this agreement had not been made, and retain the amount due, paying any surplus to the party of the second part.

In Witness, etc.

In many of the States conditional sales must be recorded in the same manner as chattel mortgages.

CHAPTER X.

STOPPAGE IN TRANSITU.

HERE is an instance where a Latin phrase has become English, by general adoption and use. *In transitu* means "in the transit," and the English phrase may just as well be used; but the Latin one is used much oftener. What the whole phrase *Stoppage in transitu* means, is this. A seller, who has sent goods to a buyer at a distance, and after sending them learns that the

buyer is insolvent, may stop the goods at any time before they reach the buyer. His right to do this is called the right of *Stoppage in transitu*.

If the goods are sent to pay a precedent and existing debt, they are not subject to this right.

The right exists only upon actual insolvency; but this need not be formal insolvency, or bankruptcy at law; an actual inability to pay one's debts in the usual way being enough. If the seller, in good faith, stops the goods, in a belief of the buyer's insolvency, the buyer may at once defeat this stoppage, and reclaim the goods, by payment of the price. So he may, by a tender of adequate security, if the sale be on credit.

The stoppage must be effected by the seller, and evidenced by some act; but it is not necessary that he should take actual possession of the goods. If he gives a distinct notice to the party in possession, whether carrier, warehouseman, middleman, or whoever else, before the goods reach the buyer, this is enough. But a notice of stoppage *in transitu*, to be effectual, must be given either to the person who has the immediate custody of the goods; or if to the principal whose servant has the custody, then at such a time, and under such circumstances, as that he may, by the exercise of reasonable diligence, communicate it to his servant in time to prevent the delivery to the consignee.

Goods can be stopped only while *in transitu*; and they are *in transitu* only until they come into the possession of the buyer. But this possession need not be actual, a constructive possession by the buyer being sufficient to prevent this stoppage; as if the goods are placed on the wharf of the buyer, or on a neighboring wharf with notice to him, or in a warehouse with delivery of the key to him, or of an order on the warehouseman.

But the entry of the goods at the custom-house, without payment of duties, does not terminate the transit. If the buyer has demanded and marked them at the place where they had arrived on the termination of the voyage or journey, personally or by his agent; or if the carrier still holds the goods, but only as the agent of the buyer; in all these cases the transit is ended. But if the carrier holds them by a lien for his charges against the buyer, the seller may pay these charges and discharge the lien, and then stop the goods *in transitu*.

If the buyer has, in good faith and for value, sold the goods, "to arrive," before he has received them, and indorsed and delivered the bill of lading, this second purchaser holds the goods free from the first seller's right to stop them. But if the goods and bill are transferred only as security for a debt due from the first purchaser to the transferee, the original seller may stop the goods, and hold them subject to this security, and need pay only the specific advances made on their credit, or on that very bill of lading, and not a general indebtedness of the first purchaser to the second.

A seller who stops the goods *in transitu* does not rescind the sale, but holds the goods as the *property* of the buyer; and they may be redeemed by the buyer or his representatives, by paying the price for which they are a security; and if not redeemed, they become the seller's, only in the same way as a pledge might become his; that is, he may sell them at a proper time, and in a proper manner, and with due notice, so that the buyer may protect his interests. And if the seller then fails to obtain from them the full price due, he has a claim for the balance upon the buyer. If he gets more than the amount due to him, he must pay over the balance to the buyer or his assignees.

An honest buyer, apprehending bankruptcy, might wish to return the goods to their original owner; and this he could undoubtedly do, if they have not become distinctly his property, and the seller his creditor for the price. But if they have, the buyer has no more right to benefit this creditor by such an appropriation of these goods, than any other creditor by giving him any other goods.

CHAPTER XI.

GUARANTY.

A GUARANTOR is one who is bound to another for the fulfilment of a promise, or of an engagement, made by a third party. This kind of contract is very common. Generally it is not negotiable; that is, not transferable so as to be enforced by the transferee as if it had been given to him by the guarantor. No special form or words are necessary to the contract of guaranty; and if

the word "guarantee" be used, and the whole instrument contains all the characteristics of a note of hand, payable to order or bearer, then it is negotiable. Thus, in a case in New York, the instrument was as follows: "For and in consideration of thirty-one dollars and fifty cents received of B. F. Spencer, I hereby guarantee the payment and collection of the within note to him or *bearer*. Auburn, Sept. 25, 1837. (Signed) Thomas Burns." And it was held negotiable. What *negotiable* means will be more fully explained in the chapter on Notes of Hand and Bills of Exchange.

The guaranty may be enforced, although the original debt cannot; as, for example, the guaranty of the promise of a wife or an infant; and sometimes the guaranty of a debt is requested, and given, for the very reason that the debt is not enforceable at law. But, generally, the liability of the principal measures and limits the liability of the guarantor. And if the creditor agree that the principal debt shall be reduced or lessened in a certain proportion, the obligation of the guarantor is reduced by law in an equal proportion.

A contract of guaranty is construed somewhat strictly. Thus, a guaranty of the notes of one, does not extend to notes which he gives jointly with another.

A guarantor who pays the debt of the principal may demand from his creditor the securities he holds, although not an assignment of the debt itself, or of the note or bond which declares the debt, for that is paid and discharged. And sometimes the creditor will not be permitted to resort to the guarantor until he has collected as much as he can from these securities.

Unless the guaranty is by a sealed instrument, there must be a consideration to support it. If the original debt or obligation rest upon a good consideration, this will support the promise of guaranty, if this promise was made at the same time with or prior to the original debt. But if that debt or obligation be first incurred and completed before the guaranty is given, there must be a new consideration for the promise to guarantee that debt, or the guaranty is void. But the consideration need not pass from him who receives the guaranty to him who gives it. Any benefit to him for whom the guaranty is given, or any injury to him who receives it, is a sufficient consideration if the guaranty be given because of it.

A guaranty is not binding unless it is accepted, and unless the guarantor has knowledge of this. But the law presumes this acceptance in general, when the giving of the guaranty and any action on the faith of it, by the party to whom it is given, are simultaneous. In New York, wherever the guaranty is absolute, notice of its acceptance is unnecessary, unless expressly or impliedly required by the offer of guaranty. But, generally, an offer to guarantee a future operation, especially if by letter, does not bind the offerer unless he has such notice of the acceptance of his offer as would give him a reasonable opportunity of making himself safe.

If the liability of the principal be materially varied by the act of the party guaranteed, without the consent of the guarantor, the guarantor is discharged. Many interesting cases have arisen which involve this question. Thus, where a bond was given conditioned for the faithful performance of the duties of the office of deputy collector of direct taxes for eight certain townships, and the instrument of appointment, referred to in the bond, was afterwards altered so as to extend to another township without the consent of the surety, the Supreme Court of the United States held that the surety was discharged from his responsibility for moneys collected by his principal after the alteration. Again, in an English case, the facts were, that, in a bond by sureties for the careful attention to business and the faithful discharge of the duties of an agent of a bank, it was provided "that he should have no other business of any kind, nor be connected in any shape with any trade, manufacture, or mercantile copartnery, nor be agent for any individual or copartnery in any manner or way whatsoever, nor be security for any individual or copartnery in any manner or way whatsoever." The bank subsequently, without the knowledge of the sureties, increased the salary of the agent, he undertaking to bear one-fourth part of all losses which might be incurred by his discounts. It was held that this was such an alteration of the contract, and of the liability of the agent, that the sureties were discharged, notwithstanding that the loss arose, not from discounts, but from improper conduct of the agent.

The guarantor is also discharged if the liability or obligation be renewed or extended by law. As if a bank, incorporated for twenty years, be renewed for ten more, and the officers and busi-

ness of the bank go on without change; the original sureties of the cashier are not held beyond the first term. So a guaranty to a partnership is extinguished by a change among the members, although neither the name nor the business of the firm be changed. But a guaranty, by express terms, may be made to continue over most changes of this kind.

A specific guaranty, for one transaction which is not yet exhausted, is not revocable. If it be a continuing or a general guaranty, it is revocable, unless an express agreement, founded on a consideration, makes it otherwise.

Whether a guaranty of payment for goods supplied to a certain amount, without further restriction,—as, for example, if A writes to B, “I will be responsible for C’s purchases from you to the extent of \$500”—is a continuing guaranty to that amount, or is exhausted when goods to that amount have once been furnished, is often a question of some difficulty, and the decisions of the courts on the subject are not uniform. If the guaranty is intended to be limited to a single transaction, therefore, it is important that this should be clearly expressed.

A creditor may give his debtor some accommodation or indulgence without thereby discharging his guarantor. It would seem just, however, that he should not be permitted to give him any indulgence which would materially prejudice the guarantor. Generally, a guarantor may always pay a debt, and so acquire at once the right of proceeding against the party whose debt he has paid. On this ground, it has been held, that where a surety requested the creditor to proceed against the principal debtor, and the creditor refused to do this, and afterwards the debtor became insolvent and the surety was without indemnity, still the surety (or guarantor) was not discharged, because he might have paid the debt, and then sued the party whose debt he paid. In New York, it seems to be the law, that, if the surety requests the creditor to proceed against the principal debtor and he refuses, and the principal debtor afterwards becomes insolvent, the surety will be discharged. If, by gross negligence, the creditor has lost his debt, and has deprived the surety of security or indemnity, the surety must be discharged unless he was equally negligent. If a creditor gives time to his debtor by a binding agreement which will prevent a suit in the meantime, this undoubtedly discharges the guarantor (unless the surety consents

to the delay) because it deprives him of his power of acquiring a right of proceeding against the debtor, by paying the debt; for the debtor cannot during that time be sued.

If there be a failure on the part of the principal, and the guarantor is looked to, he should have reasonable notice of this. And, generally, any notice would be reasonable which would be sufficient in fact to prevent his suffering from the delay. And if there be no notice, and the guarantor has been unharmed thereby, he is not discharged.

If a guaranty purport to be official,—that is, if it be made by one who claims to hold a certain office, and to give the promise of guaranty only as such officer, and not personally,—the general rule is, that he is not liable personally, provided he actually held that office and had a right to give the guaranty officially. But he would still be held personally, if the promise made, or the relations of the parties, indicated that credit was given personally to the parties promising, and not merely to them in their official capacity; or if he had no right to give the promise in his official capacity.

A guaranty was given for the price of a cargo of iron, and the buyer bargained with the seller to pay him more than the fair price, the excess to go towards an old debt. The guaranty was held to be altogether void, because fraudulent; and could not be enforced even for the fair price.

FORMS OF GUARANTY.

(47.)

Guaranty to be Indorsed on a Note.

For value received I guarantee the payment of the within-written note.

(Date.)

(Signature.)

(48.)

Guaranty of a Note on Separate Paper.

For value received I guarantee the due payment of a promissory note dated _____ whereby _____ promises to pay to _____, _____ dollars, in _____ months.

(Date.)

(Signature.)

(49.)

Guaranty in Another Way.

For value received I guarantee that the within (*note or bill, or that such a note or bill, describing it*) will be collected and paid if demanded in due course of law.

(Date.)

(Signature.)

(50.)

Letter of Guaranty.

Sir,—If you will sell to Mr. _____, of _____, the goods he wishes to buy (*or the goods may be described*) to the amount of _____ (*this may be omitted if the guaranty is intended to be of any amount*), within _____ year (*or days or months, or the time may be omitted if it is not intended to limit it*) from the date hereof, I, for value received, hereby promise and guarantee that the price thereof shall be duly paid. (*This letter should also state on what terms the goods should be sold, as to credit, delivery, etc., unless it is intended to leave all this to the buyer and seller.*)

(Date.)

(Signature.)

(51.)

Letter of Continuing Guaranty.

Sir,—I hereby agree to be responsible to you, to the extent of _____ dollars, for the price of any goods (*or the goods may be described*) which you may hereafter at any time sell to A. B.

When goods or stocks or other securities are given as collateral security for borrowed money or any other debt, an instrument is sometimes given, the intention of which is to guarantee that the collaterals should be and remain sufficient to secure the indebtedness. It may be in one of the following forms, as the bargain requires. These are sometimes called "margin guaranties."

(52.)

Guaranty with Collaterals authorizing Sale.

Whereas, I have deposited with _____ as collateral security for payment at maturity of _____ (*here describe the notes or debts guaranteed*).

Now this Witnesseth, That in the event of the non-payment at maturity of any or all of these _____ I hereby authorize the said _____ or his assigns, to sell the above _____ (*the collaterals*) at public or private sale, or at the brokers' board, without notice to me, and apply proceeds to payment of said _____ and all necessary expenses, holding myself responsible for any deficiency.

In Witness Whereof, I have hereunto set my hand and seal, this _____
day of _____, one thousand nine hundred and _____

(Signature.)

(Witness.)

(53.)

Guaranty with Collaterals, promising Additional Security or Authorizing Sale.

Having Borrowed this Day of _____ (*the sum borrowed*) on the following collaterals (*here describe the collaterals*).

I Hereby Agree, in case the market-price of the said stock should fall at any time during the continuance of the loan to an amount insufficient to cover the sum loaned, with _____ per cent. margin added thereto, that in such event I will, on demand, deposit additional security to be approved by him, which shall be sufficient to keep the collaterals thus deposited equal to a sum _____ per cent. above said loan, and so as often as said collaterals shall diminish; and that, in default thereof, the said _____ shall have power to sell at public or private sale, without notice, all, or any of the said securities (as well as any others he may hold), to pay the amount of the said loan, with all interest and charges thereon, and for so doing, I fully release him of all claims, actions, and causes thereof.

CHAPTER XII.

THE STATUTE OF FRAUDS.

SECTION I.

ITS PURPOSE AND GENERAL PROVISIONS.

THE Statute of Frauds, so called, was passed in the 29th year of Charles II. (1677) for the purpose of preventing frauds and perjuries, by requiring in many cases written evidence of a contract. In nearly all our States a similar statute has been enacted. But no two of the statutes of the different States agree exactly in all their provisions. They do, however, agree substantially; and we shall give in this chapter the prevailing and nearly universal rules for the construction and application of this statute. It is often of very great importance in commercial transactions. Those provisions which especially relate to business law are contained in the fourth and seventeenth sections.

By the fourth section, it is enacted that "no action shall be brought whereby to charge any executor or administrator, upon any special promise, to answer damages out of his own estate; or whereby to charge the defendant, upon any special promise, to answer for the debt, default, or miscarriages of another person; or to charge any person upon any agreement made upon consideration of marriage; or any contract for sale of lands, tenements, or hereditaments, or any interest in or concerning them; or upon any agreement that is not to be performed within the space of one year from the making thereof; unless the agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized."

By the seventeenth section, it is enacted that "no contract for the sale of any goods, wares, and merchandise, for the price of £10 sterling, or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized."

The second and fifth clauses of the fourth section, and the whole of the seventeenth, relate to our present subject. The second clause prevents an *oral* guaranty from being enforced at law; but if money be paid on one, it cannot be recovered back.

SECTION II.

A PROMISE TO PAY THE DEBT OF ANOTHER.

It is very often difficult to say whether the promise of one to pay for goods delivered to another is an *original* promise, as to pay for one's own goods, and then it need not be in writing, or a promise to pay the debt or guaranty the promise of him to whom the goods are delivered, and then it must be in writing. If it be a promise to pay the debt of another, it is said to be a *collateral* promise, and not an *original* promise. The question may always be said to be: *To whom did the seller give, and was*

authorized to give, credit? This question the jury will decide, upon consideration of all the facts, under the direction of the court. If a seller sues one to whom he did not deliver the goods, on the ground that this other promised to pay for them, then the question is, Did this other promise to pay for them as for his own goods? for then the promise need not be in writing. Or did he promise to pay for them as for the goods of the party receiving them? and then it is a promise to pay the debt of another, and must be in writing. If, on examination of the books of the seller, it appears that he charged the goods to the party who received them, it will be difficult, if not impossible, for the seller to maintain that he sold them to the other party. But if he charged them to this other, such an entry would be good evidence, and, if confirmed by circumstances, strong evidence that this party was the purchaser. But it cannot be conclusive; for the party not receiving the goods may always prove, if he can, that he was not the buyer, and that he promised only as surety for the party who was the buyer; and, consequently, that his promise cannot be enforced if not in writing. And, in general, in determining this question, the court will always look to the actual character of the transaction, and the intention of the parties.

The courts both in England and in America have often endeavored to illustrate this question. Thus, in an early English case, the court said: "If two come to a shop, and one buys, and the other, to gain him credit, promises the seller, 'If he does not pay you, I will,' this is a *collateral* undertaking, and void, without writing, by the Statute of Frauds. But if he says, 'Let him have the goods, I will be your paymaster,' this is an undertaking as for himself, and he shall be intended to be the very buyer, and the other to act but as his servant." So, in a case in Maryland, the court said: "If B gives credit to C for goods sold and delivered to him, on the promise of A to 'see him paid,' or 'to pay him for them if C should not,' in that case it is the immediate debt of C, for which an action will lie against him, and the promise of A is a collateral undertaking to pay that debt [and must be in writing], he being only liable as a surety. But where the party undertaken for is under no liability himself, the promise is an original undertaking of the party promising, and binding upon him without being in writing. Thus, if B furnishes goods to C, on the express promise of A to pay for them, and if A

says to him, 'Let C have goods to such an amount, and I will pay you,' and the credit is given to A, in that case C being under no liability, there is nothing to which the promise of A can be collateral; but A being the immediate debtor, it is his original undertaking, and not a promise to answer for the debt of another;'' and therefore need not be in writing.

Whenever the main purpose and object of the promisor is not to answer for another, but to subserve some purpose of his own, his promise is not within the statute, although it may be in form a promise to pay the debt of another, and although the performance of it may incidentally have the effect of extinguishing the liability of another. If an old debt is extinguished by a new promise, this promise is considered as an original one, and not within the requirement of the statute.

If there be an oral promise to pay the debt of another, and also to do some other thing, this last can be enforced at law, if this other thing, and so much of the promise as relates to it, can be severed from the debt of the other and the promise relating to that debt; for although *that* promise must be in writing, the other may be oral.

SECTION III.

AN AGREEMENT NOT TO BE PERFORMED WITHIN A YEAR.

UNDER the fifth clause in the fourth section, it is held that an agreement which *may* be performed within the year is not affected by the statute, as the words, "that is not to be performed within one year," do not apply to an agreement which, when made, was, and by the parties was understood to be, fairly capable of complete execution within a year, without the intervention of extraordinary circumstances,—although in point of fact its execution was extended much beyond the year. So where one agreed orally, for one guinea, to give another a number of guineas on the day of his marriage, it was held that this promise was not within the statute, that is, not one which the statute required to be in writing, because he might be married within a year, and the promisor was therefore bound by it. So where one agreed orally never to go into the staging business in a certain place, as this contract could last only while the promisor lived, and he might die within a year, he was held to be bound by it.

SECTION IV.

CONTRACTS FOR SALE OF GOODS.

UNDER the seventeenth section of the statute it is held in this country that shares in railroad and manufacturing companies, and generally, in all corporations and joint-stock companies, are "goods, wares, or merchandise," within the meaning of the statute, and that an agreement for their purchase and sale must therefore be in writing.

Instead of the £10 specified in the English statute, the sums mentioned in the statutes of the different States are generally from thirty to fifty dollars.

Under the first clause of the section there must not only be a delivery of the goods, but they must be received and accepted by the buyer. As to what is sufficient to constitute such acceptance, the intention of the buyer, the nature of the goods, and the circumstances of the case are all material. If he intends to retain possession of the goods, and manifests his intention by a suitable act, it is an actual acceptance. He has a right to examine the goods and ascertain their quantity and quality before determining whether to accept them or not, and a retention by him for a time sufficient for this examination, and no more, is not an acceptance.

Under the second clause of this section "earnest" is regarded as a part payment of the price. It must have some value, however small, and must be actually given and received, and given and received as "earnest." A part payment, to bring the contract within the statute, must be an actual one, made at the time the contract is entered into; agreement to pay and subsequent payment are not enough.

As to contracts of sale for future delivery, there is some conflict of authority, but the weight of opinion seems to be that where the article is one actually in existence at the time the contract is made, or is one that the vendor usually has for sale, the statute applies; but not where the article is to be specially manufactured for the vendee.

SECTION V.

THE FORM AND SUBJECT MATTER OF THE AGREEMENT.

THE "agreement" must be in writing; but generally, in this country, the writing need not contain or express the consideration, which may be proved otherwise. In several of the States, however, as in Alabama, Minnesota, Nevada and Oregon, the consideration must be expressed; and this is the rule in England, and also in New Hampshire and Georgia except as to guaranties. Nor need the agreement be all on one piece of paper. For it is sufficient if on several pieces, as in several letters, which, however, relate to one and the same business, and may fairly be read together as the statement of one transaction. But it must appear from the papers that they are so connected.

The "signature" may be in any part of the paper,—the beginning, middle, or end, except in those of our States in which the statute has the word "subscribed" instead of "signed;" in which case it should be in the usual place at the bottom. If the name and the agreement be *printed*, it is sufficient; hence, a printed shop-bill, with the name of the seller, as usual, at the beginning, if delivered to the buyer, is generally sufficient to charge the seller in an action for refusing to deliver the goods.

It may be further remarked, that the operation of the statute has been always limited to such contracts as have not been executed in any substantial part, and therefore remain wholly executory. For if they had been executed substantially in good part, they are binding, although only oral.

In Massachusetts, the Statute of Frauds also provides (3d section) that no action shall be brought to charge any person upon, or by reason of, any representation or assurance made concerning the character, conduct, credit, ability, trade, or dealings of any other person, unless it be made in writing, and signed by the party to be charged. And there are provisions substantially similar to this in the statutes of Maine and Vermont.

CHAPTER XIII.

PAYMENT AND TENDER.

SECTION I.

HOW PAYMENT MAY BE MADE.

THE obligations which arise out of most mercantile contracts are to be satisfied by payment of money. The parties may always agree to any specific manner of payment, and then that becomes obligatory on the creditor as well as the debtor. As, by deducting the amount to be paid from a debt due to the debtor either from the creditor or from any one else. Or the amount may be made, by agreement, payable by a bill or note. If the debt is to be paid by a bill, it must be such a bill as is agreed upon, and this must be tendered by the debtor. But the word "bill" does not necessarily mean an "approved bill"; and if this phrase be itself used, it means only a bill to which there is no reasonable objection; that is, one which ought to be approved.

In the absence of any especial agreement, the only payment known to the law is by cash, which the debtor must pay when it is due, or tender to the creditor.

The tender should, properly, be in coin, or in bills made a legal tender by law, and must be so if that is required; but a tender in good and current bank-bills is sufficient, unless it be objected to because they are not money.

Generally, if the tender be refused for any express and specific reason, the creditor cannot afterwards take advantage of any *informality*, to which he did not object at the time of the tender.

The tender may be of a larger sum than is due. But a tender of a larger sum, if made with a requirement of change or of the balance, is not good. Nor must it be accompanied with a demand or condition that any instrument or document shall be delivered; nor that the sum tendered shall be received as all that is due; nor that a receipt in full shall be given. But a simple receipt for so much money paid may be demanded. We have already seen

that, if a receipt be given, it is only strong evidence of payment, but not conclusive. And even if it be "in full of all demands," it is still open to explanation or denial by evidence.

A lawful tender, and payment of the money into court, is a good defense to an action for the debt. But the creditor may break down this defense by proving that, subsequently to the tender, he demanded the money of the debtor, and the debtor refused to give it.

If the buyer or debtor give, and the seller or creditor receive, a negotiable note or bill for the sum due, this is not anywhere absolute and conclusive payment. In Maine and in Massachusetts the law presumes that such note or bill is payment of the debt, unless a contrary intention is shown. In nearly all the States of this Union but those two, and in the Supreme Court of the United States, it is not payment, unless the intention of the parties that it should be so is shown. In New York, it has been held that the debtor's own promissory note is not payment, even if it be intended or expressly agreed that it should be. If a creditor, who receives from his debtor any bill or note, negotiates or sells it for value to a third party, without making himself liable, the bill or note is payment, although it be dishonored, because it has been good to the creditor, and he has received the avails of it; and if the law did not hold that the bill had paid the debt, he could sue the original debt, and then he would have the value of the bill, or payment, twice. Not so, however, if he negotiates it in such a way that he is himself liable upon it; for if he pays it, he loses what he sold it for, unless he can recover his debt from his debtor.

SECTION II.

APPROPRIATION OF PAYMENT.

If one who owes several debts to his creditor makes to him a general payment, it may be an important question to which of those debts this payment shall be appropriated; for some of them may be secured, and others not, or some of them may carry interest, and others not, or some of them be barred by the Statute of Limitations, and others not.

There is no doubt that the payor may appropriate his payment, at the time of the payment, at his own pleasure. And if he does

not exercise this right, the receiver may, at the time of payment, make the appropriation. But if neither party does this *at that time*, and at a future period the question comes up as to which party may then make the appropriation, or rather, how the law will then appropriate the payment, it is then the better and prevailing rule, that, if the court can ascertain, either from the words used, or from the circumstances of the case, or from any usage, what was the intention and understanding of the parties at the time of the payment, that intention will be carried into effect. And if this cannot be ascertained, then the court will direct such appropriation of the payment as will best protect the rights and interests of both parties, and do justice between them. And one reason for this conclusion would be, that the law would presume that this was the original intention of the parties. A very general rule, which would indeed be always adopted in the absence of especial reason to the contrary, is, to apply the payment first to the oldest debt, until that is satisfied, and then go on applying the payment to the other debts in the order of their age.

If A owes a debt to B, on B's own account, and another debt to B as trustee for somebody, and A pays B a sum of money without appropriating it, B cannot apply it all to the debt due him on his own account; but must divide it between that debt and the debt due to him as trustee, in proportion to their respective amounts. Because it is his duty as trustee to take as good care of the debts due to him for another, as of those due to him on his own account.

We have spoken of a "bill or note," and notes are sometimes called bills; so bank-notes are often called bank-bills. But the legal meaning of "bill" is always a *draft* or *order* on somebody to pay money. A note is a *promise* to pay. See chapter on notes and bills.

CHAPTER XIV.

RECEIPTS AND RELEASES.

A RECEIPT is only an acknowledgment that a sum of money has been paid. It may be in one word, as when, under a bill of parcels, the seller writes the word "Paid," and signs it. More commonly the words are, "Received Payment." Formerly it was usual to add the words "Errors Excepted." Then it grew customary to write the initial letters "E. E." instead of the words; but all this is unnecessary. If there be an error in the receipt, or in the paper receipted, the law permits the party injured by it to explain and correct the error, although there be no express reservation or exception of errors.

Receipts are of all degrees of fulness, from the single word "paid," to those which relate the particulars for which the receipt is given, and the manner in which the money was paid or the thing delivered. I give the following forms:

(54.)

(Date) Received from _____, _____ dollars.

(Signature.)

(55.)

(Date) This day I have received from _____, _____ dollars, on account of _____.

(Signature.)

(56.)

(Date) This day the following (*papers, or other articles, enumerating and describing them*) were delivered to me by _____, (*add, on account of, or in execution of, the promise or bargain, describing it; and, if they are delivered for any particular purpose, describe that*), and I hereby acknowledge the receipt of them.

(Signature.)

Every receipt is open to evidence, not only to explain it, but to contradict it. Herein releases differ from receipts. A release gives up some right or claim which the releasor had against the releasee. It is in the nature of a contract, and therefore cannot be controlled or contradicted by evidence, unless on the ground

of fraud. But if its words are ambiguous, or may have either of two or more meanings, evidence is receivable to determine the meaning.

Like every other contract, a release requires a consideration, and is of no force without one. But here comes in the rule of law as to a seal. The general rule is, as has been stated before, that a seal implies, or is the same as, the assertion of a consideration; and therefore it is always customary to put a seal to a release. But a release, even with a seal, if it can be shown to have been given without any consideration whatever, can be set aside. And the payment of a part of an ascertained debt in satisfaction of the whole is not a sufficient consideration. Hence a release or receipt in full given on the partial payment of a debt is no bar to an action to recover the balance of the debt unless there was some added consideration, such as a new responsibility incurred by a third party, or a composition deed among creditors. It is always best to state in the release itself that it was given for a consideration, and what the consideration is. A release properly drawn, and duly signed and sealed, is a complete defence to an action grounded on any of the debts or claims released.

The following forms are for releases of various kinds:

(57.)

A General Release.

Know all Men by these Presents, That I, (*the name of the releaser*) of _____ for and in consideration of the sum of _____, to me paid by _____ of _____, have remised, released, and forever discharged, and by these presents do, for me, my heirs, executors, and administrators, remise, release, and forever discharge the said _____, his heirs, executors, and administrators, of and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sum and sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, damages, judgments, extents, executions, claims, and demands whatsoever in law and in equity, which against the said _____, I ever had, now have, or which I, my executors or administrators hereafter can, shall, or may have, for, upon, or by reason of, any matter, cause, or thing whatsoever, from the beginning of the world to the day of the date of these presents.

In Witness Whereof, I hereunto set my hand and seal this _____ day of _____, 19____.

(58.)

A General Release—Short Form.

Know all Men by these Presents, That I _____ of _____ in consideration of _____ dollars to me paid by _____, the receipt of which is hereby acknowledged, do hereby, for myself and my heirs, executors and administrators, release and discharge the said _____, his heirs, executors and administrators, from all claims, demands, and causes of action of every kind and nature which I now have, or may hereafter have, against the said _____ by reason of any matter or thing whatsoever to the time of the execution of those presents.

In Witness Whereof, I have hereunto set my hand and seal this _____ day of _____, 19____.

(Signature.) (Seal.)

Executed in presence of

(59.)

A Mutual General Release by Indenture.

This Indenture, Made between A. B. of _____, and C. D. of _____, witnesseth, that the said A. B. doth, by these presents remise, release, and forever quitclaim, unto the said C. D., all and all manner of actions, (as in No. 57); and this indenture further witnesseth, that the said C. D. by these presents, doth remise, release, and forever quitclaim, unto the said A. B., all and all manner of actions (as before).

In Witness Whereof, etc.

(60.)

A Release from Creditors to a Debtor, under a Composition.

To all Persons to whom these Presents may come, we who have hereunto set our hands and seals, creditors of _____ of _____, send greeting. Whereas, the said _____ is indebted to us his said creditors, in several sums of money, which he is not able fully to satisfy and discharge; we therefore have agreed, and do hereby agree, to accept of the sum of _____ in full payment and satisfaction of all the debts, owing to us respectively at the date hereof, by and from the said _____ which is paid by or for the said (the name of the debtor) to (the names of the persons to whom the money is to be paid for the creditors releasing) _____, for the use of, and to the intent that the same may be shared and divided amongst us his said creditors, in proportion and according to the debts to us severally due and owing: Now therefore know ye, that for the consideration aforesaid, each of us, the said creditors who have hereunto set our hands and seals, for him and herself, his and her heirs, executors, and copartners, doth by these presents, remise, release, and forever discharge the said _____, his heirs, executors, and administrators, of and from our said several debts, and all and all manner of action and actions which against the said _____, each and every of us the said creditors now hath, or which each and every of our

heirs, executors, or administrators, respectively, hereafter may, can, or ought to have, claim, or demand for, upon, or by reason of the said several and respective debts to us severally due and owing, or for or by reason of any other matter, cause, or thing whatsoever from the beginning of the world.

In Witness Whereof, etc.

(61.)

A Release of all Legacies.

Know all Men by these Presents, That I, _____, of _____, have remised, released, and forever quitclaimed and by these presents do for me, my executors and administrators remise, release, and forever quitclaim _____ unto _____ of _____, gentleman, executor of the last will and testament of _____, late of _____, deceased, and to the heirs, executors, and administrators of the said _____, all legacies, gifts, bequests, sum and sums of money and demands whatsoever, bequeathed and given unto me the said _____, in and by the last will and testament of _____, deceased, and all manner of actions and suits, sum and sums of money, debts, duties, reckonings, accounts, and demands whatsoever, which I the said _____ ever had, now have, or that I, my executors or administrators, can or may, at any time or times hereafter, have, challenge, or demand against the said _____, his executors, administrators, or assigns, for or by reason of any matter, cause, or thing whatsoever, from the beginning of the world until the day of the date hereof.

In Witness Whereof, etc.

(62.)

A Release of a Bond, it being Lost.

To all to whom these Presents may come, (*name of releaser*) sendeth greeting. Whereas _____ by his bond or obligation, bearing date _____ (*recite the bond*), as by the said bond or obligation, and the condition thereof may appear: And whereas the sum of _____ mentioned in the said bond, with all the interest for the same, is paid and satisfied unto me the said _____, in full discharge for the said bond or obligation: And whereas the said bond or obligation is lost, or at present mislaid, so that it cannot be found to be delivered up to the said _____, to be cancelled: Now know ye, that I the said _____ for the consideration aforesaid, have remised, released, and quitclaimed, and by these presents do, for me, my executors and administrators, remise, release, and forever quitclaim unto the said _____, his heirs, executors, and administrators, as well the said recited bond or obligation, as all such sums of money as therein are mentioned to be due and payable, unto me the said _____, my executors, administrators, or assigns; and also all actions, suits, cause and causes of action, accounts, debts, reckonings, sums of money, judgments, executions, and demands whatsoever, which I, the said _____ ever had, now have, or that I, my executors, administrators, or assigns, or any of us, can or may have, for or against the said _____, his executors or administrators, for, or by reason of, the said recited bond or obligation, or any other matter, cause, or thing whatso-

ever, concerning the same, from the beginning of the world to the day of the date hereof.

In Witness Whereof, I the said _____ have hereunto set my hand and seal this _____ day of _____, 19____

(Signature.) (Seals.)

In Presence of

(The following covenant may be inserted before "In witness.")

And I, the said _____, for me, my executors and administrators, do covenant, to and with the said _____, his executors and administrators, that if I the said _____, my executors or administrators, or any of us, at any time hereafter, do find or can obtain the said recited bond or obligation, then I, the said _____, my executors or administrators, or some of us, shall and will, within two months next after the said obligation shall be found as aforesaid, deliver, or cause to be delivered, the said bond or obligation, unto the said _____, his executors or administrators.

(63.)

A Release of a Judgment Lien.

This Indenture, Made the _____ day of _____, in the year one thousand nine hundred and _____, between _____ of _____, party of the first part, and _____ of _____, party of the second part, witnesseth:

Whereas, Judgment was rendered on the _____ day of _____, in the year one thousand nine hundred and _____, in an action in the _____ court for the county of _____, and state of _____, between _____ plaintiff and _____ defendant, in favor of the said _____ against the said _____ for the sum of _____ as appears by the records of said court.

Now this Indenture Witnesseth, That the said party of the first part, in consideration of the sum of _____ to him duly paid at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, released, discharged and set over, and by these presents does grant, release, discharge and set over, unto the said party of the second part, the following described premises, to wit: (*description of premises released*).

Together with the hereditaments and appurtenances thereto belonging; and all the right, title and interest of the said party of the first part, of, in and to the same, to the intent that the lands hereby conveyed may be released and discharged from the said above-mentioned judgment, and from all lien or incumbrance that has attached to the same by reason of the recovery of the said judgment, as free and clear in all respects as though said judgment had not been rendered. To have and to hold, the lands and premises hereby released and conveyed, to the said party of the second part, his heirs and assigns, to his and their only proper use, benefit and behoof forever, free, clear and discharged of and from all lien and claim, under and by virtue of the judgment aforesaid.

In Witness Whereof, The said party of the first part has hereunto set his hand and seal the day and year first above written.

In Presence of

(Signature.) (Seals.)

(64.)

A Release of a Condition.

Know all Men by these Presents, That I, _____, of _____, for divers good considerations me hereunto moving have remised, released, and quitclaimed, and by these presents, for me, my executors, administrators, and assigns, do remise, release and quitclaim unto _____ of _____, his heirs, executors, administrators, and assigns, as well one proviso or condition, as all and every the sum and sums of money, specified in the same proviso or condition, contained or comprised in one pair of indentures bearing date _____, made between me, the said _____ of the one part, and the said _____ of the other part, and also all and all manner of actions and suits, cause and causes of actions and suits, for or concerning the said proviso or condition.

In Witness Whereof, I the said _____ have hereunto set my hand and seal this _____ day of _____, 19____

(Signature.) (Seal.)

In Presence of

(65.)

A Release of a Covenant contained in an Indenture of Lease.

To all Persons to whom these Presents may come, (*name of releaser*) sendeth greeting. Whereas in and by an indenture of lease, bearing date _____, made between _____, of the one part, and the said _____ of the other part, there is contained a covenant in these words following, viz. (*recite the covenant verbatim, as therein contained*) whereunto relation being had, it doth at large appear: Now know ye, that I, the said _____, for divers good causes and considerations, me hereunto moving, have remised, released, and quitclaimed, and by these presents for me and my executors and administrators do remise, release, and quitclaim unto the said _____, his executors and administrators, the said covenant, grant, clause, agreement, and article, before rehearsed or recited, and all and every other matter, thing and things specified, declared, and contained in the same covenant, clause, and agreement, and all the benefit, profit, advantage, and commodity, that by any manner of means, may or might arise, grow, come, or happen to me the said _____, for or by reason of the same covenant, clause, article, or agreement, or any word, sentence, matter, thing, or things therein contained, so that the said _____, his executors and assigns, and every of them, from henceforth forever, shall be fully acquitted, released, and discharged against me the said _____, my executors and administrators, and every of us, of, from, and for the said covenant, grant, clause, article, and agreement before rehearsed or recited, and of, from, and for, everything and things, touching the same (but this present release shall not in anywise extend to any other covenant, clause, or article in the said indenture contained).

In Witness Whereof, I the said _____, have hereunto set my hand and seal this _____ day of _____, 19____

(Signature.) (Seal.)

In Presence of

(66.)

A Release from a Lessor to a Lessee (upon his surrendering his Lease) from the Covenants therein.

To all Persons to whom these Presents may come, (*name of releaser*) sends greeting: Whereas the said _____ by his indenture of lease, bearing date _____ did demise unto _____ a messuage in _____ at a certain rent, for a certain term of years, of which about _____ years are yet to come and undetermined, in which said lease are contained covenants for repairing the said premises, and other covenants, on the part of the said _____ to be performed. And whereas, by agreement between the said _____ and _____ the said _____ hath delivered up the said recited lease, and surrendered the same, and all his interest and term in and to the said house and premises: Now therefore know ye, that the said _____, in consideration thereof, doth hereby, for himself, his heirs, executors, and administrators, remise, release, and forever discharge the said _____, his executors and administrators, of and from all and every the covenants and agreements, in the said recited lease contained, by and on the part and behalf of the said _____, his executors and administrators, to be done and performed, and from all actions, suits, costs, charges, payments, damages, claims, and demands whatsoever, in law and equity, for or concerning the same in any manner of wise.

In Witness Whereof, I, the said _____, have hereunto set my hand and seal this _____ day of _____, 19____

(Signature.) (Seal.)

In Presence of

(67.)

A Release of Dower.

To all to whom these Presents shall come, _____ (*name of releaser*) sends greeting: Know ye, that the said _____, the party of the first part to these presents, for and in consideration of the sum of _____, lawful money of the United States, to her in hand paid at or before the ensembling and delivery of these presents, by _____ of the second part, the receipt whereof is hereby acknowledged, hath granted, remised, released, and forever quitclaimed, and by these presents doth grant, remise, release, and forever quitclaim, unto the said party of the second part, his heirs and assigns forever, all the dower and thirds, right and title of dower and thirds, and all other right, title, interest, property, claim and demand whatsoever, in law and equity, of her, the said party of the first part, of, in, and to (*here describe the estate the dower in which is released*) so that she, the said party of the first part, her heirs, executors, administrators or assigns, nor any other person or persons, for her, them, or any of them, shall not have, claim, challenge, or demand, or pretend to have, claim, challenge, or demand, any dower or thirds, or any other right, title, claim, or demand whatsoever, of, in, or to the same, or any part or parcel thereof, in whosoever hands, seisin, or possession, the same may or can be, and thereof and therefrom shall be utterly barred and excluded forever by these presents.

In Witness Whereof, The said party of the first part to these presents hath hereunto set her hand and seal, the _____ day of _____, in the year of our Lord one thousand nine hundred and _____.

(Signature.) (Seal.)

In Presence of

(68.)

A General Release of Dower to the Heir.

Know all Men by these Presents, That I, _____, widow of _____, late of _____, as well for and in consideration of _____ dollars, to me paid, at or before the ensembling and delivery of these presents, by my son _____, the receipt whereof I do hereby acknowledge, and for the love and affection which I have to my said son, have granted, remised, released, and forever quitclaimed, and by these presents do grant, remise, release and forever quitclaim unto the said _____, his heirs and assigns forever, all the dower and thirds, right and title of dower and thirds, and all other right, title, interest, property claim, and demand whatsoever, in law and in equity, of me the said _____ of, in, and to any and all lands, wherever situated, of which my late husband, the said _____, died seized and possessed or of which he was seized and possessed at any time during the existence of the marriage between us, so that neither I, the said _____, my heirs, executors, or administrators, nor any other person or persons for me, them, or any of them, shall have, claim, challenge, or demand, or pretend to have any dower or thirds, or any other right to claim or demand of, in, or to the said premises, but thereof and therefrom, shall be utterly debarred and excluded, forever, by these presents.

In Witness Whereof, etc.

(69.)

A Release of Dower in Consideration of an Annuity given by Will.

To all Persons to whom these Presents may come, (*name of releaser*) widow and residuary legatee of _____, late of _____, deceased, sendeth greeting. Whereas the said _____, in and by his last will and testament, duly signed, sealed, published, and declared in my presence and with my approbation, bearing date _____, did settle and secure unto and upon me the said _____, an annuity of _____ to be paid unto me half-yearly, by equal payments, in lieu and full satisfaction of the dower or thirds at common law, which I might otherwise have, claim, or be entitled unto, out of all and every the lands, tenements, and hereditaments whatsoever, of my said late husband, deceased, or of, in, to, or out of the reversion or remainder, rents, issues, and profits thereof: Now know ye, that I the said _____, for and in consideration of the said annuity so secured to me as aforesaid, and in pursuance and part performance of the said last will and testament of my said late husband, do hereby declare myself fully satisfied and contented therewith, and do hereby remise, release, and forever quitclaim unto _____ of _____, and _____ of _____, trustees, appointed in and by

the said last will and testament of my said late husband (in their actual possession and seisin now being) their heirs and assigns, all and all manner of dower in and to the said premises, but thereof and therefrom, shall be utterly debarred and excluded, forever, by these presents.

In Witness Whereof, etc.

(Signature.) (Seal.)

In Presence of

(70.)

A Release of Right to Lands.

Know all Men by these Presents, That I _____ (*name of releasor*) of _____, in consideration of _____ to me paid by (*name of releasee*) the receipt of which is hereby acknowledged, have remised, released, and forever quitclaimed, and by these presents do remise, release and forever quitclaim unto the said _____ and his heirs, all the estate, right, title, interest, use, trust, claim, and demand whatsoever, both at law and in equity, which I the said _____ have, of, in, to, or out of, all and singular the following described parcel of land (*here describe the land*) so that neither I, the said _____, my heirs or assigns, or any other person or persons in trust for me or them, or in my or their name or names, or in the name, right, or stead of any of them, shall or will, can or may, by any ways or means whatsoever, hereafter have, claim, challenge, or demand, any right, title, or interest, property, claim, and demand, of, in, to or out of the same, or any of them, or any part thereof, but that I the said _____, my heirs, and assigns, and every of them, from all estate, right, title, interest, property, claim, and demand, of, in, to, or out of the said _____ or any of them, or any part thereof, are, is, and shall be, by these presents forever excluded and debarred.

In Witness Whereof, etc.

(71.)

A Release between two Traders on Settling Accounts.

Whereas sundry accounts, current and otherwise, and divers dealings in trade have been subsisting for a long time past between _____ of _____, trader, and _____ of _____, trader, which said accounts and dealings, the said _____ and _____ have balanced and adjusted, whereby it appears that nothing remains due from the one to the other; and whereas, therefore, to prevent any future disputes concerning the said accounts and dealings, and to confirm the said adjustment, the said _____ and _____ have mutually agreed to give reciprocal releases from each other. Now know all men by these presents, that the said _____ (*one of the parties*) (for the consideration abovesaid, and to prevent all future disputes) for himself, his executors, and administrators, doth remise, release, and forever quitclaim unto the said _____ (*the other party*) his executors and administrators, all and all manner of action and actions, cause and causes of action, suits, debts, dues, sum and sums of money, accounts, reckonings, bonds, specialties, covenants, contracts, controversies, agreements, promises, vari-

ances, damages, extents, executions, claims and demands whatsoever, both at law and in equity, which against the said _____ his _____ the said _____ now hath or ever had, on account of their said mutual dealings, or for or by reason of any other cause, matter, or thing whatsoever, from the beginning of the world to the day of the date of these presents.

And the said _____ (*the other party*) (for the consideration abovesaid, and to prevent all future disputes) for himself, his executors, and administrators, doth remise, release, and forever quitclaim unto the said _____ (*the first party*), his executors and administrators, all and all manner of action and actions, cause and causes of action, suits, debts, dues, sum and sums of money, accounts, reckonings, bonds, specialties, covenants, contracts, controversies, agreements, promises, damages, extents, executions, claims, and demands whatsoever, both at law and in equity, which against the said _____, his executors and administrators, the said _____ now hath or ever had, on account of their said mutual dealings, or for or by reason of any other cause, matter, or thing whatsoever, from the beginning of the world to the day of the date of these presents.

In Witness Whereof, we have hereunto set our hands and seals, this _____ day of _____, in the year _____

(*Signatures.*) (*Seals.*)

In Presence of

(72.)

Mutual Releases.

Whereas, _____ of _____, and _____ of _____, have heretofore had certain claims and demands, each against the other, which claims and demands have been adjusted and settled, so that now neither of said parties has any claim or demands against the other.

Now be it Known that; in consideration of the premises, each of said parties, for himself and his heirs, executors and administrators, doth hereby release and discharge the other of said parties, his heirs, executors and administrators from all claims, demands and causes of action of every kind and nature whatsoever both at law and in equity to the date of these presents.

In Witness Whereof, The said parties have hereunto and to a duplicate hereof set their hands and seals this _____ day of _____, 19____

(*Signatures.*) (*Seals.*)

Executed in presence of

CHAPTER XV.

NOTES OF HAND AND BILLS OF EXCHANGE, DRAFTS AND CHECKS.

SECTION I.

THE PURPOSE OF, AND THE PARTIES TO, SUCH PAPERS.

THESE instruments are usually negotiable. By *negotiable* paper is meant evidence of debt which may be transferred by indorsement or delivery, so that the transferee or holder may sue the same in his own name, and as if it had been made to him originally; or, in other words, it means paper, that is, bills of exchange or promissory notes, or drafts, or checks, payable to the order of a payee, or to bearer.

The rules of law on the subject of negotiable paper are more exact and technical than those of any other department of Mercantile Law. They reach, on many points, an extreme nicety, which makes it difficult to express them intelligibly to persons who do not already possess some familiarity with the subject. All difficulty of this kind could have been easily avoided by me by omitting any notice of these nice points. But it was thought better to mention them, one and all, for these are the things an intelligent man of business should know; and although the rules stated, especially those in reference to presentment, demand, notice, and some other subjects, may seem to be intricate and difficult, they require, it is believed, only careful consideration to be fully understood.

While the general principles of the law relating to negotiable instruments have been the same in all parts of the country, there have been minor differences in the laws of the several States. In order to make the law uniform throughout the country, an act prepared under the auspices of the American Bar Association, and known as the "Uniform Negotiable Instrument Law," has been recently adopted and is in force in nearly all the States.

Where and when bills of exchange were invented is not certainly known. They were not used by any ancient nations, but have been employed and recognized by most commercial nations for

some centuries. A still more recent invention is the promissory negotiable note, which, in this country, for inland and domestic purposes, has taken the place of the bill of exchange very generally. Besides these two, bills of lading, and some other documents, have a kind of negotiability, but it is quite imperfect. The utility of bills and notes in commerce, arises from the fact that they represent money, which is the representative of the market value of everything; and many of the peculiar rules respecting negotiable paper are derived from this representation, and intended to make it adequate and effectual.

A negotiable bill of exchange is a written order whereby A orders B to pay to C *or his order*, or *to bearer*, a sum of money absolutely and at a certain time.

(73.)

Common Form of a Bill of Exchange.

\$ _____ New York, January _____, 19____
 _____ days (or months) after sight, (or At sight,) pay to the order of
 C. _____ dollars. Value received, and charge the same to account of

(Signed) A.

To B.

A is the Drawer, B the Drawee, and C the Payee. If the bill is presented to B, and he agrees to obey the order, he "accepts" the bill, and this he does in a mercantile way by writing the word "Accepted" across the face of the bill, and also writing his name below this word; then the Drawee becomes the Acceptor. If C, the payee, chooses to transfer the paper and all his rights under it to some other person, he may do this by writing his name on (usually across) the back; this is called indorsement, and C then becomes an Indorser. The person to whom C thus transfers the bill is an Indorsee. The Indorsee may again transfer the bill by writing his name below that of the former Indorser, and the Indorsee then becomes the second Indorser; and this process may go on indefinitely. If the added names cover all the back of the note, a piece may be wafered on to receive more. In France, this added piece is called "*allonge*," and this word is used in some law books, but not by our merchants.

Promissory notes of hand are written in many ways, which, however, differ only in the different words in which they express

the same thing. We will first give the full Form of a technically accurate note, and afterwards of the more usual forms:

(74.)

For value received, I promise John Smith to pay to him or to his order, one thousand dollars in three months from this day, with interest from date.

HENRY SIMMONS.

But promissory notes are seldom, if ever, written in this way in practice. They are shortened and simplified in a great variety of ways, mercantile usages having given a meaning to expressions which the law accepts and enforces. Some of the more common forms in use are as follows:

\$1,000 $\frac{50}{100}$.

NEW YORK, January 5, 1900.

Three months after date, I promise to pay to the order of John Smith, one thousand $\frac{50}{100}$ dollars, at the North River Bank, value received.

HENRY SIMMONS.

If it is intended that more than one person shall be liable on the note, the following is a customary form:

\$1,000 $\frac{50}{100}$.

NEW YORK, January 5, 1900.

Value received, we jointly and severally promise to pay to Robinson, Wellman & Co., or order, one thousand $\frac{50}{100}$ dollars in three months from date.

"With interest" may be added if that is agreed upon, otherwise it bears no interest until after it is due. So it may be "on demand," in which case it bears no interest until after demand is made; "after date" or "from date," should be written, although the law would supply these words.

If the note be signed by more than one person, all the signers, whether the note says "I promise" or "We promise," are liable jointly; but in the latter case only jointly, and not jointly and severally unless the note says so.

Where the promise is joint, suit must be brought against all the promisors together; where it is joint and several the holder may elect whether to sue all jointly or to confirm his claim to one or more of the individual promisors. In the latter case he may recover the whole amount of the note from one promisor, leaving the latter such remedies for contribution as he may have against the others.

Generally speaking, notes are not made payable at any particular place. But they may be made payable at any bank, or the promisor's own house or office, or wherever else he chooses. The effect of making a note payable at a certain place is this: In this country neither a promissory note nor a bill of exchange, drawn payable at a certain place, nor a bill accepted payable at a certain place, need be presented at that place in order to sustain an action against the *maker* of a note or the *acceptor* of the bill; but he may show, by way of defence, that he was ready at that place with funds to pay the note or bill, and then he will escape all damages and interest. And if he can show a positive loss from the want of such presentment,—as, for instance, by the subsequent failure of a bank where he had placed funds to meet the note or bill,—he will be discharged from his liability on the paper to the amount of the loss. But the drawees of the bill and the indorsers of the bill or note are discharged by a neglect to demand payment at such specified place.

In some States, Indiana for example, it is customary to add “without relief from valuation and appraisal laws”; and also, “if the note is not paid at maturity five per cent. shall be added and collected as attorney's fees.”

If the note be secured by mortgage, coupon notes are sometimes attached, each of which is for six months' interest. We give below a Form for such additions to a note of hand, given in Chicago to a lender in Boston:

\$2,000.

CHICAGO, ILLINOIS, May 8th, 1900.

Three (3) years after date, for value received, I promise to pay to _____, or order, the principal sum of Two Thousand Dollars, with interest thereon at the rate of Six (6) per cent. per annum, payable semi-annually, on the 8th days of November and May, in each and every year until said principal sum is fully paid, both principal and interest payable at the office of _____, in Boston, Massachusetts.

The several instalments of interest aforesaid for said period of Three (3) years are further evidenced by Six (6) interest notes of even date herewith.

And I agree that if default be made on the payment of any one of the interest instalments at the time and place the same become due as above, and if said default shall continue for twenty days thereafter, then if the legal holder or holders of the principal note shall so elect, at any time after said twenty days, the principal sum of Two Thousand Dollars shall at once and without notice of such election made, become due and payable.

This note is secured by Trust Deed.

(75.)

Coupon Note.

CHICAGO, ILLINOIS, May 8th, 1900.

Due to _____ or order, Sixty Dollars on the 8th day of November, A. D. 1900, without grace, at the office of _____, Boston, Massachusetts, with interest at the rate of six per cent. per annum after maturity, being for an instalment of interest due on that day upon my principal promissory note of even date herewith, payable to _____ or order, three (3) years after its date, for the sum of Two Thousand (2,000) Dollars secured by trust deed.

(Five other similar coupon notes for interest are added.)

Notes of this kind are often accompanied by a power of attorney to confess judgment, in the form shown in Section IX of this Chapter.

It is quite important to have a clear idea of the difference between the parties to a note, and the parties to a bill of exchange. If A makes a note to B, then A promises to pay, and is the promisor, and B is the promisee, or payee. But if it be payable to B or order, B may write his name across the back, that is, may indorse it, and is an indorser. And if he directs, over his signature on the back, that the note be paid to any person in particular, such payee is now an indorsee. But when a bill is drawn, nobody promises, in words, to pay it. A orders B to pay to C. If B, when requested, says he will not do as ordered, the law supposes A, the drawer, to have promised that he would pay if B did not. If B "accepts," the law now supposes that B promises C to pay the bill to him. Now B, being the acceptor, is held by the law just as a maker of a note is, because he is supposed to have promised in the same way. A, the drawer, is held just as the first indorser of a note is held, because he is supposed to have promised to pay if B did not. If the bill was negotiable, that is, payable to C, or his order, then C may indorse the bill, and although his name is the only one on the back of the bill, he is treated in law only as second indorser, because the drawer is bound in the same way as a first indorser. And if D then puts his name below C's he is treated as third indorser, and so on. For the rights, obligations, and duties of all these parties, see the subsequent sections.

We repeat, that a negotiable promissory note is a written promise to pay to a certain person or his order, or to bearer, at

a certain time, a certain sum of money; and he who signs this is called the *Maker* or the *Promisor*; the other party is the *Promisee* or *Payee*. The payee of such a note has the same power of indorsement as the payee of a bill of exchange. If the note be not payable "to order," nor to "bearer," it is then not negotiable; these words "or order" or "to bearer" being the words which make it negotiable. The maker of a negotiable note holds, as has been said, the same position as the acceptor of a bill, the drawer the same as the first indorser of a note; that is, a party holding a note and seeking payment of it looks first to the maker, and then to the indorser; one holding a bill looks first to the drawee or acceptor, and, on his failure, to the drawer.

Neither indorsement, nor acceptance, nor making, is complete until delivery and reception of the bill or note, or acceptance; and a defendant may show that there was no legal delivery of the paper.

The law of negotiable paper first defines a bill or note, and determines what instruments come under these names, and then describes and ascertains the duties and obligations of all the parties we have named above. We shall follow this order.

SECTION II.

WHAT IS ESSENTIAL TO A NEGOTIABLE NOTE OR BILL.

A WRITTEN order or promise may be perfectly valid as a written contract or promise, but, although made "to order," will not be *negotiable*, unless certain requisites of the law-merchant are complied with.

The difference between a note that is negotiable and one that is not, is very important in many respects. One of these is as to the operation of the trustee process, or foreign attachment, or garnishee process, as it is sometimes called. If A owes B a hundred dollars, C, a creditor of B, may *trustee* A, and A must then pay to C what he owes to B. And this is so, even if A have given his note to B for the hundred dollars, if the note be *not negotiable*, that is, not to B or order, unless A has actual notice that the note has been assigned for value to a third person. But if the note be negotiable and not overdue, A cannot be *trusteed*. The reason is, that if he is obliged to pay the money to C, and B

should indorse the note to D for value, and D take it honestly, A must pay the note to D, and so would have to pay it twice. But if the note is not negotiable, B cannot indorse it, and A is safe in paying the money over.

Another very important difference is that defenses, such as want or failure of consideration, which could have been made against the original payee, are not open as against the *bona fide* indorsee of a negotiable note who has taken it before it is overdue.

1. THE PROMISE MUST BE ABSOLUTE AND DEFINITE.—The promise of the note and the order of the bill must be absolute. Words expressive of intention only do not make a promissory note, and a mere request without an order does not make a bill of exchange. But no one word, and no set of words, are absolutely necessary; for if from all the language the distinct promise or positive order can be inferred, that is sufficient.

The time of payment is usually written in a bill or note; if not, it is payable on demand. The time of payment must not depend on a contingency. In fact, any contingency apparent on the face of the instrument prevents it from being a negotiable note; and the happening of the contingency does not cure it. And the payment promised or ordered must be of a definite sum of money.

A negotiable bill of exchange or promissory note must be payable in money only, and not in goods or merchandise, or property of any kind, or by the performance of any act. If payable in "current funds," or good "bank-notes," or "current bank-notes," this should not be sufficient on general principles; some courts, however, construe this as meaning notes convertible on demand into money, and therefore as the same thing as money, and call the note negotiable.

A bill or note may be written upon any paper or proper substitute for it, in any language, in ink or pencil. A name may be signed or indorsed by a mark; and, though usually written at the bottom, it may be sufficient if written in the body of the note; as, "I, A B, promise," &c.; unless it can be shown that the note was incomplete, and was intended to be finished by signature. If not dated, it will be considered as dated when it was made; but a written date is *prima facie* evidence (this means evidence which may be overcome by opposite and better evidence, but until

so overcome is sufficient) of the time of making. The amount is usually written in figures at the corner or bottom. If the sum is written at length in the body, and also in figures at the corner, the written words control the figures, and evidence is not admissible to show that the figures were right and the words inaccurate. But in an American case, a promissory note, expressed to be for "three hundred dollars," and figures in the margin, \$300, was held to be a good note for three hundred dollars, if the maker when he signed it intended "three" when he wrote "three"; and whether such was his intention was a question for the jury. And the omission of such a word as "dollars," or "pounds," or "sterling," may be supplied, if the meaning of the instrument is quite clear.

It has been just said that any contingency apparent on the face of the instrument prevents it from being a *negotiable* note. Hence it is not safe to write in the body of the note, or in connection with the promise, any condition or contingency. But, if what is so written in no way affects the promise itself, the note may still be negotiable.

Thus, in some parts of this country, persons who sell a machine, or other thing, on a credit, sometimes take a promissory note payable to the seller *or order*, and containing an additional clause, providing that, until the note is paid, the property in the thing sold (or the ownership of it) shall be and remain in the seller. Such notes are often made in the following form:

(76.)

Form of a Note given for a Chattel sold, with a Condition preserving the Ownership of the Seller.

\$ _____ (Place and date) 19____
 On the _____ day of _____, 19____, I _____ of _____, County of _____, and State of _____, promise to pay _____, or order _____ dollars at the First National Bank in _____, with interest at _____ per cent. per annum until paid. And it is further agreed that the title to the (reaper) for which this note is given shall remain in said _____ (the seller) until this note is fully paid.

Value received

(Witness.)

(Signature.)

On the back of this note is sometimes the following statement:

Statement made for the Purpose of obtaining Credit.

I own _____ acres of land in my own name in the Town of _____, County of _____, and State of _____, which is worth at a fair valuation, \$_____.

It is not incumbered by mortgage or otherwise, except the amount of \$_____, and the title is perfect in me in all respects. I have stock and personal property to the amount of \$_____ over and above my debts and liabilities.

The above property being worth over and above my debts, liabilities, and exemptions at least FIVE TIMES the amount of the within note.

The question has arisen whether such a note is negotiable. Suppose the seller of the chattel, who is payee of the note, sells the note and indorses it for value to an innocent indorsee; then the buyer finds that he was cheated, and puts in this defence of fraud when he is sued on the note by the indorser. He can make this defence if this note be *not negotiable*; but he cannot make it if it be *negotiable*. I should say it was negotiable; and that the only effect of the condition or provision annexed to the promise, was, that it operated much as a mortgage of the thing, by the buyer, back to the seller, to secure the payment. In some States such a note must be recorded like a chattel mortgage.

2. THE PAYEE MUST BE DESIGNATED.—The payee should be distinctly named, unless the bill or note be made payable to bearer. If it can be gathered from the instrument, by a reasonable or necessary construction, who is the payee, that is enough. The note may be made payable to the promisor or his order; that is, a man may say, I promise to pay to my own order; and such note is nothing until the promisor not only signs it, but indorses it.

A note indorsed in blank is always transferable by delivery, just as if it were made payable to bearer; because any holder may write over the indorsement an order to pay to himself. Indorsements are either *indorsements in blank*, by which is meant the name of the indorser and nothing more, or *indorsement in full*, which are so called when over the name of the *indorser* is written, "pay to A B." (By A B we mean the name of the person to whom the note or bill is indorsed.) These two kinds of indorsements are fully explained subsequently in section VI of this chapter. A note to the order of the promisor himself, and indorsed by him in blank, is therefore much the same thing as a

note to bearer. But it is quite commonly used in our mercantile cities, because the holder can always pass it away without indorsing if he chooses, or can put his name on it as second indorser if he likes to. If the indorsee be named, and the note get into the possession of the wrong person of the same name, this person neither has nor can give a title to it. If the name be spelt wrong, evidence of intention is receivable. If a father and son have the same name, and either of them has possession of the note and indorses it, this would be evidence of his rightful ownership.

If neither payable to bearer, nor to the maker's or drawer's order, nor to any other person, it would be an incomplete and invalid instrument.

A note to a fictitious payee, with the same name indorsed by the maker, would undoubtedly be held to be the maker's own note, either payable to bearer, or to himself or order, by another name, and so indorsed. If a blank be left in a bill for the payee's name, a *bona fide* holder may fill it with his own, the issuing of the bill in blank being an authority to a *bona fide* holder to insert the name. And if the name of the payee be not the name of a person, as if it be the name of a ship, the instrument is payable to bearer. A note payable to different persons in the alternative, that is, to one or the other of them, is not a good promissory note. A bill or note "to the order of" any person is the same as if to him "or his order," and may be sued by him without indorsement.

3. OF AMBIGUOUS AND IRREGULAR INSTRUMENTS.—The law in relation to protest and damages makes it sometimes important to distinguish between a promissory note and a bill of exchange, because, by law, a foreign bill of exchange, if unpaid, should be protested, but not a promissory note; but it is a common practice to protest promissory notes when they are not paid. The rule in general is, that, if an instrument be so ambiguous in its terms that it cannot be certainly pronounced one of these to the exclusion of the other, the holder may elect and treat it as either. As if written, "Value received, in three months from date, pay the order of H. L. \$500. (Signed) A. B.;" and an address or memorandum at the bottom, "At Messrs. E. F. & Co."

4. OF BANK-NOTES.—Bank-notes or bank-bills are promissory notes of a bank, payable to bearer; and, like all notes to bearer, the property in them passes by delivery. They are intended to

be used as money; and, while a finder, or one who steals them, has no title himself against the owner, still, if he passes them away to a *bona fide* holder, that is, a holder for value without notice or knowledge, such owner holds them against the original owner. And if the bank pays them in good faith on regular presentment, the owner has no claim. They pass by a will bequeathing money. They are a good tender, unless objected to at the time because not money. Forged bills, given in payment, are a mere nullity. Bills of a bank which has failed, but of which the failure is unknown to both parties, are now, generally, put on the footing of forged or void bills. But if the receiver of them, by holding them, and by a delay of returning or giving them up, injures the payer and impairs his opportunity or means of indemnity, the receiver must then lose them.

5. OF CHECKS ON BANKS.—A check on a bank is undoubtedly a bill of exchange; but usage and the nature of the case have introduced some important qualifications of the general law of bills in its application to checks. A check requires no acceptance, because a bank, after a customary or reasonable time has elapsed since deposit, and while still in possession of funds, is bound to pay the checks of the depositors. The drawer of a check is not a surety, as is the drawer of a bill, but a principal debtor, like the maker of a note. Nor can the drawer of a check complain of any delay whatever in the presentment; for it is an absolute appropriation, as between the drawer and the holder, to the holder, of so much money in the banker's hands; there it may lie at the holder's pleasure. But delay is at the holder's risk; for if the bank fails after he could have got his money on the check, the loss is his. If the bank before he presents his check pay out all the money of the drawer on other checks, he may then look to the drawer.

If one who holds a check as payee, or otherwise, transfers it to another, he has a right to insist that the check shall be presented in the course of the banking hours of that day, or at farthest the next; that is, he is not responsible for the failure of the bank to pay, unless it is so presented, provided it would then have been paid. And if the party receiving the check live elsewhere than where the bank is, it seems that he should send it for collection the next day; and if to an agent, the agent should present it, at latest, in the course of the day after he received it.

If the check be drawn when the drawer neither has funds in the bank, nor has made any arrangement by which he has a right to draw the check, the drawing it is a fraud, and the holder may bring his action at once against the drawer, without presentment or notice.

Checks are seldom accepted. But they are often "certified" or marked by the bank as good, and this binds the bank as an acceptor.

Checks are often payable to bearer, but more frequently are drawn payable to a payee or his order; for this guards against loss or theft, because the check will not be paid unless the payee writes his name on it; and it gives to the drawer, when the check is paid and returned by the bank to him, what is the same as the receipt of the payee. Generally, a check is not payment until it is cashed; then it is payment if the money was paid to the creditor, or the check had passed through his hands. A bank cannot maintain a claim for money lent and advanced, merely by showing the defendant's check paid by it, because the general presumption is, that the bank paid the check because it was drawn by a depositor against funds.

While the death of a drawer countermands his check, if the bank pay it before notice of the death reaches it, it is discharged. This would seem to be almost a necessary inference from the general purpose of banks of deposit, and the use which merchants make of them. In Massachusetts it is provided by statute that a bank may pay a depositor's check or demand draft on presentation within ten days after its date, notwithstanding his death.

If a bank pay a forged check, it is so far its own loss, that the bank cannot charge the money to the depositor whose name was forged. But the bank could recover the money back from one who presented a forged check, and was paid, provided the payee, if innocent, lost no opportunity of indemnity in the meantime, and could be put in as good a position as if the bank had refused to pay it. But if somebody must lose, the bank should, because it is the duty of the bank to know the writing of its own depositors. If it pay a check of which the amount has been falsely and fraudulently increased, it can charge the drawer only with the original amount. But if the drawer himself causes or facilitates the forgery, as by so carelessly writing it, or leaving it in such

hands, that the forgery or alteration is easy, so that it may be called his fault, and the bank is innocent, then the loss falls on the drawer. If many persons, not partners, join in a deposit, they must join in a check; but if one or more abscond, a court of equity will permit the remainder to draw the money.

6. OF ACCOMMODATION PAPER.—An accommodation bill or note is one for which the acceptor or maker has received no consideration, but has lent his name and credit to accommodate the drawer, payee, or holder. Of course he is bound to all other parties, precisely as if there were a good consideration; for, otherwise, it would not be an effectual loan of credit. But he is not bound to the party whom he thus accommodates; on the contrary, that party is bound to take up the paper, or to provide the accommodation acceptor, or maker, or indorser, with funds for doing it, or to indemnify him for taking it up. And if, before the bill or note is due, the party accommodated provides the party lending his credit with the necessary funds, he cannot recall them; and if he becomes bankrupt, they remain the property of the accommodation acceptor, or maker, who, if sued on the bill or note, can charge the party accommodated with the expense of defending the suit, even if the defense were unsuccessful, if he had any reasonable ground of defense, because the defense was for the benefit of the party accommodated; inasmuch as he must repay the accommodation party if he pays the bill or note.

7. OF FOREIGN AND INLAND BILLS.—Bills of exchange may be foreign bills, or inland bills. Foreign bills are those which are drawn or payable in a foreign country; and for this purpose, each of our States is *foreign* to the others. Inland bills are drawn and payable at home. Every bill is, on its face, an inland bill, unless it purports to be a foreign bill. If foreign on its face, evidence is admissible to show that it was drawn at home. If a bill be drawn and accepted here, but afterwards actually signed by the drawer abroad, it is a foreign bill. If a foreign bill be not accepted, or be not paid at maturity, it should at once be protested by a notary public. Inland bills are generally, and promissory notes frequently, protested; but this is not generally required by the law. The holder of a foreign bill, after protest for non-payment, or for non-acceptance, may sue the drawer and indorser, and recover the face of the bill, and, in addition thereto, his damages, which damages on protest are generally adjusted in

this country by various statutes,—which give greater damages as the distance is greater; and an established usage would supply the place of statutes if they were wanting.

8. OF THE LAW OF PLACE.—The different States of the Union are, as to questions arising under Mercantile Law, *foreign countries as to each other*. Important questions sometimes arise in the case of foreign bills (as well as in some other cases), dependent upon what is called the Law of Place, the Latin phrase for which, *Lex Loci*, is often used. In general, every contract is to be governed by the law of the place where it is made. Thus, if a bill is drawn in France, and there indorsed in a way which is sufficient here, but insufficient there, the indorsement would here be held void. But if a contract entered into in one place is to be performed in another, as in the case of a note dated, of a bill drawn, in one State, but payable in another, the prevailing rule is, that the law of the place where the note is payable construes and governs the contract. Therefore, if a bill be drawn in England, payable in France, the protest and notice of dishonor must be regulated by the law of France. But one who makes such a note may elect, for many purposes, which law shall govern it. Thus, if he makes it in New York, and it is payable in Boston, he may promise to pay the legal interest of New York, and will be bound to this payment in Boston, although the legal interest in Boston is less; but if there be no such express promise, the interest payable will be that of the place where the note is payable.

While the law of the place of the contract interprets and construes it as a debt, the law of the place where it is put in suit—which is called the Law of the Forum, or Court—determines all questions as to remedy; that is, all questions which relate to the legal means of recovering the debt. Thus, in general, the statutes of limitation of the place of the court are applied. But if a cause of action relating to any special subject-matter which has a definite location, as a parcel of land has, be barred by a statute of limitations where the subject-matter is situated, it is barred everywhere. A promisor, not subject to arrest in the country where the note is made, may be arrested under the laws of the country where the note is sued.

It will always be presumed, in the absence of testimony, that the law of a foreign country is the same with that of the country in which the suit is brought. If a difference in this respect is a ground of defense, or of action, it must be proved by evidence.

SECTION III.

THE CONSIDERATION OF NEGOTIABLE PAPER.

1. EXCEPTION TO THE COMMON LAW RULE, IN THE CASE OF NEGOTIABLE PAPER.—By the common law of England and of this country, as we have seen, no promise can be enforced, unless made for a consideration, or unless it be sealed. But bills and notes payable to order, that is, negotiable, are, to a certain extent, an exception to this rule. Thus, an indorsee cannot be defeated by the promisor showing that he received no consideration for his promise; because the promisor made an instrument for circulation as money; and it would be fraudulent to give to paper the credit of his name, and then refuse to honor it. But as between the maker and the payee, or between indorser and indorsee, and, in general, between any two *immediate* parties, the defendant may rely on the want of consideration; that is, if an indorsee sues the maker, and the maker says he had no consideration for the note, this is no defense; but if the indorsee sues his indorser, and the indorser shows that the indorsee paid him nothing, this would be a good defense; and so it would be if the payee sued the maker. So, if a distant indorsee has notice or knowledge, when he buys a note, that it was made without consideration, he cannot recover on it against the maker, unless it was an accommodation note, or was intended as a gift.

Thus, if A, supposing a balance due from him to B, gives B his negotiable note for the amount, and afterwards discovers that the balance is the other way, B cannot recover of A; nor can any third or more distant indorsee who knows these facts before buying the note. But if A gives B his note wholly without consideration, for the purpose of lending him his credit, or for the purpose of making him a gift to the amount of the note, and C buys the note with a full knowledge of the facts, he will nevertheless hold A, although B could not. If the note was bought honestly for a fair price, the buyer should recover its whole amount. Every promissory note *imports* a consideration; that is, none, in the first place, need be proved; but when want of consideration is relied on in defense, and evidence is given on one side and the other, the burden of proof is on the plaintiff to satisfy the jury that consideration was given.

If an indorser, sued by an indorsee, shows that the note was originally made in fraud, he may require the holder to prove that he paid consideration; but if this be proved, he must pay the whole of the note, unless he was himself defrauded by the holder. And if an accommodation note be discounted in violation of the agreement of the party accommodated, the holder can still recover, provided he received the note in good faith, and for valuable consideration.

2. OF "VALUE RECEIVED."—"Value received" is usually written, and therefore should be; but is not necessary. If not written, it will be presumed by the law, or may be supplied by the plaintiff's proof. If expressed, it may be denied by the defendant, and disproved. And if a special consideration be stated in the note, the defendant may prove that there was no consideration, or that the consideration was different. If "value received" be written in a note, it means received by the maker from the payee; if the note be payable to the bearer, it means received by the maker from the holder. In a bill, "value received" means that the value was received from the payee by the drawer. But if the bill be payable to the drawer's own order, then it means received by the acceptor from the drawer.

3. WHAT THE CONSIDERATION MAY BE.—A valuable consideration may be either any gain or advantage to the promisor, or any loss or injury sustained by the promisee at the promisor's request. A previous debt, or a fluctuating balance, or a debt due from a third person, might be a valuable consideration. So is a *moral* consideration, if founded upon a previous legal consideration; as, where one promises to pay a debt barred by the statute of limitations, or by infancy. But a *merely* moral consideration, as one founded upon natural love and affection, or the relation of parent and child, is no legal consideration.

No consideration is sufficient in law if it be *illegal* in its nature; and it may be illegal because, first, it violates some positive law, as, for example, the Sunday law, or the law against usury. Secondly, because it violates religion or morality, as an agreement for future illicit cohabitation, or to let lodgings for purposes of prostitution, or an indecent wager; for any bill or note founded upon either of these would be void. Thirdly, if distinctly opposed to public policy; as an agreement in restraint of trade, or injurious to the revenue, or in restraint of marriage, or for procurement

of marriage, or suppressing evidence, or withdrawing a prosecution for felony or public misdemeanor.

SECTION IV.

THE RIGHTS AND DUTIES OF THE MAKER.

THE maker of a note or the acceptor of a bill is bound to pay the same at its maturity, and at any time thereafter, unless the action be barred by the statute of limitations, or he has some other defense under the general law of contracts. As between himself and the payee of the note or bill, he may make any defenses which he could make on any debt arising from simple contract; as want or failure of consideration; payment in whole or in part; set-off; accord and satisfaction; or the like. The peculiar characteristics of negotiable paper do not begin to operate, so to speak, until the paper has passed into the hands of third parties. Then, the party liable on the note or bill can make none of these defenses, unless the time or manner in which it came into the possession of the holder lays him open to these defenses. But the law on this subject may better be presented in our next section.

SECTION V.

THE RIGHTS AND DUTIES OF THE HOLDER OF NEGOTIABLE PAPER.

1. WHAT A HOLDER MAY DO WITH A BILL OR NOTE.—An indorsee has a right of action against all whose names are on the bill when he received it. And if one delivers a bill or note which he ought to indorse and does not, the holder has an action against him for not indorsing, or may proceed in a court of equity, to compel him to indorse. If a bill comes back to a previous indorser, he may strike out the intermediate indorsements and sue in his own name, as indorsee; but he has, in general, no remedy against the intermediate parties, because, if he made them pay as indorsers to him, they would make him pay as indorser to them. If, however, the circumstances are such that *they*, if compelled to pay, would have no right against him as an indorser to them, as, for example, if he indorse it "without recourse," then he might have a claim against them.

The holder of a bill indorsed and deposited with him for collection, or only as a trustee, can use it only in conformity with the trust. And if the indorsement express that it is to be collected for the indorser's use, or use any equivalent language, this is notice to any one who discounts it; and the party discounting the paper against this notice will be obliged to deliver the note, or pay its contents, if collected, to the indorser. Thus, Mr. Sigourney, a merchant in Boston, remitted to Williams, a London banker, for collection, a bill of exchange indorsed by him, and over his name was written, "Pay to Williams or order for my use." Williams had the bill discounted for his own benefit by his bankers, and failed; and the English court held that the indorsement showed that the bill did not belong to Williams, and that the discounters had no right to discount it for him; and they were obliged to pay the amount of it to Sigourney.

2. OF A TRANSFER AFTER DISHONOR OF NEGOTIABLE PAPER.—So long as a note remains due, everybody has a right to believe that it has not been paid, and will be paid at maturity, and may purchase it in that belief. But as soon as it is overdue the date shows it, and every person must know that it is either paid, and so extinguished, or that it has not been paid, and therefore is dishonored, and that there may be good reasons why it was not paid, or good defenses against it. He therefore now takes it at his own peril; and therefore a holder who takes the note after it becomes due is open to many of the defenses which the promisor could have made against the party from whom the holder took it; because, having notice that the bill or note is dishonored, he ought to have ascertained whether any, and, if so, what defense could be set up.

So, too, if an indorsee takes the note or bill *before* it is due, but with notice or knowledge of fraud or other good defense, which could be made against his indorser if he sued it, it is a general rule that the same defense may be made against him.

A note payable on demand is considered as not overdue, unless very old indeed, without some evidence of demand of payment and refusal, but in some States this has been changed by statute. But it is not so with a check; for this should be presented without unreasonable delay.

3. OF PRESENTMENT FOR ACCEPTANCE.—It is most important to the holder of negotiable paper to know distinctly what his

duties are in relation to presentment for acceptance or payment, and notice to others interested in case of non-acceptance or non-payment.

It is always prudent for the holder of a bill to present it for acceptance without delay; for if it be accepted, he has new security; if not, the former parties are immediately liable; and it is but just to the drawer to give him as early an opportunity as may be to withdraw his funds or obtain indemnity from a debtor who will not honor his bills. And if a bill is payable at sight, or at a certain period after sight, there is not only no right of action against anybody until presentment, but, if this be delayed beyond a reasonable time, the holder loses his remedy against all previous parties. And although the question of reasonable time is generally one only of law, yet, in this connection, it is treated as so far a question of fact, that it is submitted to the jury. There is no certain rule determining what is reasonable time in this respect. If a bill of exchange be payable on demand, it is not like a promissory note, but must be presented within a reasonable time, or the drawer will be discharged. A holder may put a bill payable after sight into circulation, without presenting it himself; and in that case, if a subsequent holder presents it, a longer delay in presentment would be allowed than if the first holder had kept it in his own possession.

The presentment should be made during business hours; but in this country they extend through the day and until evening, except in the case of banks. Any distinct usage established where the presentment is made would probably be received in evidence, and permitted to affect the question.

Ill health, or other actual impediment without fault, may excuse delay on the part of the holder; but the request of the drawer to the drawee not to accept does not excuse non-presentment for acceptance.

Presentment for acceptance should be made to the drawee himself, or to his agent authorized to accept. And when it is presented, the drawee may have a reasonable time to consider whether he will accept, during which time the holder is justified in leaving the bill with him. This time is now generally fixed by statute as twenty-four hours. And if the holder gives more than twenty-four hours for this purpose, he should inform the previous parties of it. If the drawee has changed his residence, the

holder should use due diligence to find him; and what constitutes due or reasonable diligence is a question of fact for a jury. And if he be dead, the holder should ascertain who is his personal representative, if he has one, and present the bill to him. If the bill be drawn upon the drawee at a particular place, it is regarded as dishonored if the drawee has absconded, so that the bill cannot be presented for acceptance at that place.

4. OF PRESENTMENT FOR DEMAND OF PAYMENT.—The next question relates to the duty of demanding payment; and here the law is much the same in respect both to notes and bills.

The universal rule of the law-merchant is, that the indorsers of negotiable paper are supposed to agree to pay it *only* if the maker or previous indorsers do not, and *provided* due measures are taken by the holder to get it paid by those who ought, in the first place, to pay it. Every holder of negotiable paper can hold it as long as he likes, and not lose his claim against the *maker* of a note, or the *acceptor* of a bill, unless he holds it more than six years, and the Statute of Limitations bars his claim. The reason is, that the maker or acceptor promises *directly*, and not merely to pay if another does not. But every indorser of a note or bill, and every drawer of a bill, only promises to pay if the maker or acceptor or some previous indorser does not. If there is a bill of exchange with six indorsers, the last promises in law to pay it only if the acceptor, the drawer, and the five previous indorsers do not pay. He has therefore a right that a demand according to law should be made against every one of these persons, and that their refusal to pay should be notified to him, forthwith, so that he may secure himself if he can. And the law-merchant is very rigorous and precise in defining what demand should be made by the holder, and when and how demand should be made on every *prior* party, in order to hold any *subsequent* party; and also as to what notice of the demand and refusal of the *prior* party should be given to any *subsequent* party to whom the holder looks for payment.

A demand is sufficient if made at the usual residence or place of business of the payer, either of himself, or of an agent authorized to pay; and this authority may be inferred from the habit of paying, especially if the agent be a child, a wife, or a servant. The demand should not be made in the street, although a demand then would probably be held good, unless objected to at the time

because made there. When a demand is made, the bill or note should be exhibited; and if lost, a copy should be exhibited, although this is not absolutely necessary. And when a payer calls on the holder, and declares to him that he will not pay, and desires him to give notice to the indorsers, this constitutes a demand and refusal, provided this declaration be made at the maturity of the paper; but not if it was made before maturity, because the payer may change his intention.

Bankruptcy or insolvency of the payer is no excuse for non-demand; although the shutting up of a bank may be regarded as a refusal to all its creditors to pay its notes. Absconding of the payer is generally a sufficient excuse; but if the payer has shut up his house, the holder must nevertheless inquire after him, and find him, if he can by proper efforts. Even in case of absconding, it is always better to go through the formality of making a demand at the payer's last residence or place of business; and this is held necessary in Massachusetts. If the payer be dead, demand should be made at his house, unless he have personal representatives, and in that case, of them. And if the holder die, presentment should be made by his personal representatives; that is, by his executor or administrator.

If the drawer has no effects in the hands of the drawee, and has no arrangement or understanding which gives him a right to draw, non-presentation for payment is not a defense which he can make if sued on the bill.

Impossibility of presenting a bill for payment, without the fault of the holder, as the actual loss of a bill, or the like, will excuse some delay in making a demand for payment; but not more than the circumstances require. And the mere mistake of the holder as to the time, place, person, and manner, is no excuse, because he has no right to make mistakes to the injury of other people.

At common law all negotiable paper payable at a time certain is entitled to grace, which here means three days' delay of payment, unless it be expressly stated and agreed that there shall be no grace; and a presentment for payment before the last day of grace is premature, the note not being due until then. If the last day of grace falls on Sunday, or on a legal holiday, the note is due on the Saturday, or other day before the holiday. But if there be no grace, and the note falls due on a Sunday, or other

holiday, it is not payable until the next day. In most of the States days of grace have now been abolished by statute. At the close of the chapter we give an abstract of the laws of all the States concerning days of grace and holidays.

Generally, if a bill or note be payable in or after a certain number of days from date, sight, or demand, in counting these days, the day of date, sight, or demand, is excluded, and the day on which it falls due included. And the law would supply the word "*from,*" etc., if the word were not used. Thus, a note dated January 1, and payable in "twenty days," would be held payable in twenty days (and three days' grace) *after* the day of the date; that is, on the 24th. If a note is made payable in one or more months, this means calendar months, whether shorter or longer. If made on the 13th of December, and payable in two months, it is payable on the 13th of February and grace, that is, on the 16th. But if so many days are named, they must be counted, whether they are more or less than a month. Thus, if the above note were payable in sixty days, it would be due on the 11th and grace, or on the 14th of February. If dated 13th of January, and payable in sixty days, it would be due on the 14th of March, with grace, or on the 17th.

Although payment must be demanded promptly, that is, on the day on which it is due, it need not be done instantly; a holder has all the business-part of the day in which the bill or note falls due to make his demand in.

Bills and notes payable on demand should be presented for payment within a reasonable time. If said to be "*on interest,*" this strengthens the indication that they were intended to remain for a time unpaid and undemanded. But to hold indorsers, they should still be presented within whatever time circumstances may make a reasonable time; and this is such a time as the interests and safety of all concerned may require; and it may be a few days, or even one or two weeks. A bill or note in which no time of payment is expressed is held to be payable on demand. And evidence to prove it otherwise is inadmissible.

The holder of a check should present it at once; for the drawer has a right to expect that he will; it should, therefore, be presented, or forwarded for presentment, in the course of the day following that in which it was received, or, upon failure of the bank, the holder will lose the remedy he would otherwise have

had against the person from whom he receives it. If the drawer of the check had no funds, he is liable always.

Every demand of payment should be made at the proper place, which is either the place of residence or of business of the payer, and within the proper hours of business. If made at a bank after hours of business, if the officers are there, and refuse payment for want of funds, the demand is sufficient.

A note payable at a particular place should be demanded at that place; and a bill drawn payable at a particular place should be demanded there, in order to charge the drawer of a bill, and the indorsers of a bill or note. But in this country an action may be maintained against the maker or acceptor without such demand; but the defendant may discharge himself of damages and costs beyond the amount of the paper, by showing that he was ready at that place with funds. If a note is payable at any of several different places, presentment at any one of them will be sufficient. If a bill which is drawn payable generally, be accepted payable at a particular place, the holder may and should so far regard this as non-acceptance, that he should protest and give notice. But if this limited acceptance is assented to and received, it must be complied with by the holder, and the bill must be presented for payment at that place, or the drawer and indorsers are discharged.

If payable at a banker's or at the house or counting-room of any person, and such banker or person becomes the owner at maturity, this is demand enough; and if there are no funds deposited with him for the payment, this is refusal enough. If any house be designated, a presentment to any person there, or at the door if the house be shut up, is enough.

If this direction be not in the body of the note, but added at the close, or elsewhere, as a memorandum, it is not part of the contract, and should not be attended to.

If the payer has changed his residence, he should be sought for with due diligence; and, if he has absconded, it is better to make the demand at his last place of residence or business.

Where a bill or note is not presented for payment, or not presented at the time, or to the person, or in the place, or in the way, required by law, all parties but the acceptor or maker are discharged, for the reasons before stated.

5. OF PROTEST AND NOTICE.—If a bill of exchange be not accepted when properly presented for that purpose, or if a bill or note, when properly presented for payment, be not paid, the holder has a further duty to perform to all who are responsible for payment. In case of non-payment of a *foreign* bill, there should be a regular protest by a public notary; but this is not strictly necessary in the case of an inland bill, or a promissory note, whether foreign or inland. But in practice, all bills if not accepted, and all bills and notes if unpaid, are protested. By a *foreign* bill is meant a bill drawn in one State or country, and payable in another. But notice of non-payment should be given to all antecedent parties, equally, and in the same way, in the case of both bills and notes. '

The demand and protest must be made according to the laws of the place where the bill is payable. It should be made by a notary-public, who should present the bill himself; but, if there be no notary-public in that place or within reasonable reach, it may be made by any respectable inhabitant in the presence of witnesses.

The protest should be noted on the day of demand and refusal; and may be filled up afterwards, even so late as at the trial.

The loss of a bill is not a sufficient excuse for not protesting it. But a subsequent promise to pay by a drawer or indorser, if made with knowledge of the facts, is held to imply, or be equal to, a previous protest and notice to him.

The notarial seal is of itself evidence of the dishonor of a foreign bill, but not of an inland bill. And no collateral statement in the certificate is evidence of the fact therein stated; thus the statement by a notary, that the drawee refused to accept or pay because he had no funds of the drawer, is no evidence of the absence of such funds.

Notice must be given even to one who has knowledge. No particular form is necessary; it may be in writing, or oral; all that is absolutely essential is, that it should designate the note or bill with sufficient distinctness, and state that it has been dishonored; and also that the party notified is looked to for payment; but it has been held that the notice to the party bound to pay, when given by the immediate holder of the bill, sufficiently implies that he is looked to. Notice of protest for non-payment is sufficient

notice to indorsers of demand and refusal. How distinctly the note or bill should be described cannot be precisely defined. It is enough if there be no such looseness, ambiguity, or misdescription as might mislead a man of ordinary intelligence; and if the intention was to describe the true note, and the party notified was not actually misled, this would always be enough.

The notice need not state for whom payment is demanded, nor where the note is lying; and even a misstatement in this respect may not be material if it do not actually mislead.

No copy of the protest need be sent to indorsers; but information of the protest should be given.

If the letter be properly put into the post-office, any miscarriage of the mail does not affect the party giving notice. The address should be sufficiently specific. The surname only—as “Mr. Ames,”—especially if sent to a large city, would not, in general, be enough. If a letter, however generally directed, can be shown to have reached the right person at the right time, it is sufficient. The postmarks are strong evidence that the letter was mailed at the very time these marks indicate, but this evidence may be rebutted, that is, contradicted.

A notice not only may, but should, be sent by the public post. It may, however, be sent by a private messenger; but is not sufficient if it does not arrive until after the time at which it would have arrived by mail. It may be sent to the town where the party resides, or to another town, or to a more distant post-office, if it is clear that he may thereby receive the notice earlier. And if the notice is sent to what the sender deems, after due diligence, the nearest post-office, this is enough.

The notice should be sent either to the place of business, or to the residence, of the party notified. But if one directs a notice to be sent to himself elsewhere than at home, it may be so sent, and bind not only him, but prior parties, although time is lost by so sending it.

The notice of non-payment should be sent within reasonable time; and in respect to negotiable paper, the law-merchant defines this within very narrow limits. If the parties live in the same town, notice must be given, or sent by mail, so that the party to whom it is sent may receive the notice in the course of the day next after that in which the party sending has knowledge of the fact. If the parties live in different places, the notice

must be sent as soon as by the first practicable mail of the next day, or the next mail, if there be none on the next day.

Each party receiving notice has a day, or until the next post after the day in which he receives it, before he is obliged to send the notice forward. Thus, if there be six indorsers, and the note is due on the 10th of May, in New York, and is then demanded and unpaid, the holder may send it by any mail which leaves New York on the 11th of May, to the last indorser, wherever he lives; and that indorser may send it to the indorser immediately before him, by any mail on the day after he receives it; and so may each of the parties receiving notice; and all the parties to whom notice is sent in this way will be held. So, too, a banker, with whom the paper is deposited for collection, is considered a holder, and entitled to a day to give notice to the depositor, who then has a day for his notice to antecedent parties. The different branches of one establishment have been held distinct holders for this purpose, and each to be entitled to a day. It should be sent by the first safe opportunity.

Neither Sunday nor any legal holiday is to be computed in reckoning the time within which notice must be given.

There is no presumption of notice; and the plaintiff must prove that it was given, and was sufficient. Thus, proving that it was given in "two or three days" is insufficient, if *two* would have been right, but *three* not.

Notice should be given only by a party to the instrument, who is liable upon it, and not by a stranger; and it has been held that notice could not be given by a first indorser, who, not having been notified, was not himself liable. A notice by any party liable will operate to the benefit of all antecedent or subsequent parties; that is, will hold them all to the original holder of the note, if the original holder gave notice properly to the party nearest to him. The notice may be given by any authorized agent of a party who could himself give notice.

Notice must be given to every antecedent party who is to be held. And we have seen that this may be given by a holder to the first party liable, and by him to the next, &c. But the holder may always give notice to all antecedent parties; and it is always prudent, and in this country usual, to do so. For the holder loses all remedy against all those who are discharged by the failure of any one receiving notice to transmit it properly.

But if a holder undertakes to notify *all* the antecedent parties, he must notify all as soon as he was obliged to notify the party nearest to him; that is, the day after the dishonor of the note. We mean by this, that every party has a *day*; so that, if there be six indorsers, if the first indorser is notified on the seventh day from the dishonor, it is enough, *if* the holder took his day to notify the sixth indorser, and that indorser his day to notify the fifth, and so on. But the holder has nobody's day but his own; and if he undertakes to notify all the parties, he must notify them all on the first day after the non-payment.

Notice may be given personally to a party, or to his agent authorized to receive notice, or left in writing at his home or place of business. If the party to be notified is dead, notice should be given to his personal representatives. A notice addressed to the "legal representative of," &c., and sent to the town in which the deceased party resided at his death, has been held sufficient. But a notice addressed to the party himself, when known to be dead, or to "the estate of," &c., would not be of itself sufficient, but might become so with evidence that the administrator or executor actually received the notice.

If two or more parties are jointly liable on a bill as partners, notice to one is enough; but, if the indorsers are not partners, notice should be given to each.

One transferring by delivery, without indorsement, a note or bill payable to bearer, is not generally entitled to notice of non-payment, because, generally, he is not liable to pay such paper; but if the circumstances of the case are such as to make him liable, then he must have notice, but is entitled not to the exact notice of an indorser, but only to such reasonable notice as is due to a guarantor. If, for instance, the paper was transferred as security, or even in payment of a pre-existing debt, this debt revives if the bill or note be dishonored; and therefore there must be notice given of the dishonor.

In general, a guarantor of a bill or note, or debt, is not entitled to such strict and exact notice as an indorser is entitled to, but only to such notice as shall save him from actual injury; and he cannot make the want of notice his defense, unless he can show that the notice was unreasonably withheld or delayed, and that he has actually sustained injury from such delay or want of notice. If an indorser give also a bond, or his own note, to pay the

debt, he is not discharged from his bond or note by want of notice.

In general, all parties to negotiable paper, who are entitled to notice, are discharged by want of notice. The law presumes them to be injured, and does not put them to proof.

The right to notice may be waived by any agreement to that effect prior to the maturity of the paper. It is quite common for an indorser to write, "I waive notice," or "demand," or, "I waive demand and notice," or some words to this effect. It should, however, be remembered, that these rights are independent, and one does not imply the other. A waiver of notice of non-payment does not imply a waiver of demand; therefore, if an indorser writes on the note, "I waive notice," still he will be discharged if there be not a due *demand* on the maker. And it has been held that a waiver of protest is a waiver of *demand*, but not of *notice*. So if a drawer countermands his order, the bill should still be presented, but notice of dishonor need not be given to the drawer. Or, if a drawer has no funds, and nothing equivalent to funds, in the drawee's hands, and would have no remedy against the drawee or any one else, as the drawer cannot be prejudiced by want of notice, it is not necessary to give him notice. But the indorser must still be notified; and a drawer for the accommodation of the acceptor is entitled to notice, because he might have a claim upon the acceptor.

Actual ignorance of a party's residence justifies the delay necessary to find it out, and no more; and after it is discovered, the notifier has the usual time.

Death, or severe illness, of the notifier or his agent, is an excuse for delay; but the death, bankruptcy, or insolvency of the drawee of a bill is no excuse.

As the right to notice may be waived before maturity, so the want of notice may be cured afterwards by an express promise to pay; and an acknowledgment of liability, or a payment in part, is evidence, but not conclusive evidence, of notice; the jury *may* draw this conclusion from part payment, but are not *bound* to, even if the evidence be not rebutted. If the promise be conditional, and the condition be not complied with, the promise has been held to be still evidence of protest. Nor is it sufficient to avoid such promise, that it was made in ignorance of the law; but it is void if made in ignorance of the *fact* of non-notice.

SECTION VI.

THE RIGHTS AND DUTIES OF THE INDORSER.

ONLY a note or bill payable to a payee or order is, strictly speaking, subject to indorsement. Those who write their names on the back of any note or bill are indorsers in the one sense, and are sometimes called so; but are not meant in the law-merchant by the word "indorsers."

The payee of a negotiable bill or note—whether he be also maker or not—may indorse it, and afterwards any person or any number of persons may indorse it. The maker promises to pay to the payee or his order; and the indorsement is an order on the maker to pay the indorsee, and the maker's promise is then to pay the note to him. But if the original promise was to the payee or order, this "or order," which is the negotiable element, passes over to the indorsee, though not written in the indorsement, and the indorsee may indorse, and so may his indorsee, indefinitely.

Each indorser, by his indorsement, does two things: first, he orders the antecedent parties to pay his indorsee; and next, he engages with his indorsee, that, if they do not pay, he will.

If the words "to order," or "to bearer," are omitted accidentally, or by mistake, they may be afterwards inserted without injury to the bill or note; and whether a bill or note is negotiable or not, is a question of law.

By the law-merchant, bills and notes which are payable to order can be effectually and fully transferred only by indorsement. This indorsement may be *in blank*, or *in full*. The writing of the name of a payee,—either the original payee or an indorsee,—with nothing more, is an indorsement in blank; and a blank indorsement makes the bill or note transferable by delivery, in like manner as if it had been originally payable to bearer. After a note has been indorsed by a payee, any person may write his name on the note under that of the payee, and be held as indorser,—because any subsequent holder may write over the name of the first indorser a direction to pay the note to the next signer, and this makes the next signer an indorsee, and so gives him a right to indorse; and he or any holder may write over his name an order to pay the holder, or anybody else. If the indorsement consist not only of the name, but of an order above the name to

pay the note to some specified person, then it is an indorsement in full, and the note can be paid to no one else unless that person indorses it; nor can the property in it be fully transferred, except by his indorsement; and his indorsee may again indorse it in blank or in full. If the indorsement is, Pay to A B *only*, or in equivalent words, A B is indorsee, but cannot indorse it over.

Any holder for value of a bill or note indorsed in blank, whether he be the first indorsee or one to whom it has come through many hands, may write over any name indorsed an order to pay the contents to himself; and this makes it a special indorsement, or an indorsement in full. This is often done for security; that is, to guard against the loss of the note by accident or theft. For the rule of law is, that negotiable paper transferable by delivery (whether payable to bearer or indorsed in blank) is, like money, the property of whoever receives it in good faith. The same rule has been extended in England to exchequer bills; to public bonds payable to bearer; and to East India bonds; and we think it would extend here to our railroad and other corporation bonds, and, perhaps, to all such instruments as are payable to bearer, whether sealed or not, and whatever they may be called. If one has such an instrument, and it is stolen, and the thief passes it for consideration to a *bona fide* holder, this holder acquires a legal right to it, because the property and possession go together. But if the bill or note be *special* indorsed, no person can acquire any property in it, except by the indorsement of the special indorsee.

It may be well to remark here, that the finder of negotiable paper, as of all other property, ought to make reasonable endeavors to discover the owner, and is entitled to use the thing found as his own only when he has made such endeavors unsuccessfully. If he conceals the fact of finding, and appropriates the thing to his own use, he is liable to the charge of larceny or theft.

The written transfer of negotiable paper is called an indorsement, because it is almost always written on the back of the note; but it has its full legal effect if written on the face.

Joint payees of a bill or note, who are not partners, must all join in an indorsement.

An indorser may always prevent his own responsibility by writing "without recourse," or other equivalent words, over his indorsement; and any bargain between the indorser and in-

dorsee, written or oral, that the indorser shall not be sued, is available by him against that indorsee; but he cannot make this defense against subsequent indorsees who had no notice of the bargain before they took the note.

Every indorsement and acceptance admits conclusively the genuineness of the signature of every party who has put his name upon the bill previously in fact, and who is also previous in order. By this is meant, that if an indorser—say a third indorser—is sued, he cannot defend himself by saying that the names of the maker and first and second indorsers, or either of them, were forged, because by indorsing it himself he gives his indorsee a right to believe that the previous signatures were genuine. And an acceptor cannot say that his drawer's name is forged; but he may say that an indorsement which was on the bill when he accepted it was forged, because an indorsement of a bill comes properly and in *order of law* after acceptance.

If a holder strikes out an indorsement by mistake, he may restore it; if on purpose, the indorser is permanently discharged.

A holder may bring his action against any prior indorser, either by making title through all the subsequent indorsements, or by filling any blank indorsement specially to himself, and suing accordingly; but then he invalidates all the indorsements which are subsequent to that which he has made special to himself.

One may make a note or bill payable to his own order, and indorse it in blank; and this is now very common in our commercial cities, because the holder of such a bill or note can transfer it by delivery, and it needs not his indorsement to make it negotiable further. A note to the maker's own order, if not indorsed by him, is, strictly speaking, of no force against him. But there is some disposition in the courts to say that a holder of such note may sue the maker as if the note were to bearer.

A transfer by delivery, without indorsement, of a bill or note payable to bearer, or indorsed in blank, does not generally make the transferer responsible to the transferee for the payment of the instrument. Nor has the transferee a right to fall back, in case of non-payment, upon the transferer for the original consideration of the transfer, if the bill were transferred in good faith, in exchange for money or goods; for such transfer would be held to be a sale of the bill or note, and the purchaser takes it with all risk.

An indorsement may be made on the paper before the bill or note is drawn; and such indorsement, says Lord Mansfield, "is a letter of credit for an indefinite sum, and it will not lie in the indorser's mouth to say that the indorsements were not regular." The same rule applies to an acceptance on blank paper. So an indorsement may be made after or before acceptance, though strictly proper only after.

A bill or note once paid at or after maturity, ceases to be negotiable, in reference to all who had been discharged by the payment. If issued again, it is like a new note without their names. If a bill or note is paid before it is due, it is valid in the hands of a subsequent *bona fide* indorsee, and must be paid to him.

A portion of a negotiable bill or note cannot be transferred, so as to give the transferee a right of action for that portion in his own name. But if the bill or note be partly paid, it may be indorsed over for the balance.

After the death of a holder of a bill or note, his executor or administrator may transfer it by his indorsement.

If the rule that the same party cannot be plaintiff and defendant prevents the action, as where A, B, & Co. hold the note of A, C, & Co., so that if a suit were brought A would be one of the plaintiffs and one of the defendants also, which cannot be, A, B, & Co. may indorse the note to D, who may then sue A, C, & Co.

SECTION VII.

THE RIGHTS AND DUTIES OF THE ACCEPTOR.

ACCEPTANCE applies to bills, and not to notes. It is an engagement of the person on whom the bill is drawn to pay it according to its tenor. The acceptance must be in writing and signed by the drawee. It is usually made by writing the word "accepted" across the face of the bill, followed by the signature of the drawee. It may, however, be made on a separate paper, but in such case it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value. Under the provisions of the Uniform Negotiable Instruments Law, the holder may require the acceptance to be written on the bill, and, in case of refusal, may treat the bill as dishonored. A written promise to accept a future

bill, if it distinctly define and describe that very bill, has been held in this country as the equivalent of an acceptance, if the bill was taken on the credit of such promise.

A banker is liable to his depositor without acceptance of his checks, if he refuses to pay checks drawn against funds in his hands.

If a bill is accepted by a part only of those jointly responsible, or joint drawees, it may be treated by the holder as dishonored; but if not so treated, the parties accepting will be bound.

An acceptance may be made after maturity, and will be treated as an acceptance to pay on demand.

The acceptance may be canceled by the holder; and if this canceling be voluntary and intended, it is complete and effectual; but if made by mistake, by him or other parties, and this mistake can be shown, the acceptor is not discharged. And if the canceling be by a third party, it is for the jury to say whether the holder authorized or assented to it.

If a qualified acceptance be offered, the holder may receive or refuse it. If he refuses it, he may treat the bill as dishonored; if he receives it, he should notify antecedent parties, and obtain their consent; without which they are not liable. But if he protests the bill as dishonored, for this reason, he cannot hold the acceptor upon his qualified acceptance.

A bill drawn on one incompetent to contract, as from infancy, marriage, or lunacy, may be treated by the holder as dishonored.

A bill can be accepted only by the drawee,—in person or by his authorized agent,—or by some one who accepts for honor.

SECTION VIII.

ACCEPTANCE OR PAYMENT FOR HONOR.

If a bill be protested for non-acceptance or for non-payment, any person may accept it, or pay it "for the honor" either of the drawer or of any indorser. This he usually does by going with the bill before the notary public who protested the bill, and there declaring that he accepts or pays the bill "for honor"; and he should designate for whose honor he accepts or pays it, at the time, before the notary public, and it should be noted by him.

A general acceptance *supra protest* (which is the phrase used both by merchants and in law, meaning, upon or after protest)

for honor, is taken to be for honor of the drawer. The drawee himself, refusing to accept it generally, may thus accept for the honor of the drawer or an indorser. And after a bill is accepted for honor of one party, it may be accepted by another person for honor of another party. And an acceptance for honor may be made at the intervention and request of the drawee.

No holder is obliged to receive an acceptance for honor; he may refuse it wholly. If he receive it, he should, at the maturity of the bill, present it for payment to the drawee, who may have been supplied with funds in the meantime. If not paid, the bill should be protested for non-payment, and then presented for payment to the acceptor for honor.

The undertaking of the acceptor for honor is collateral only; being an engagement to pay if the drawee does not. It can only be made for some party who will certainly be liable if the bill be not paid; because, by an acceptance or by a payment, properly made, for honor, *supra protest*, such acceptor or payer acquires an actual claim against the party for whom he accepts, or pays, and against all parties to the bill antecedent to him, for all his lawful costs, payments, and damages, by reason of such acceptance or payment. This is an entire exception to the rule that no person can make himself the creditor of another without the request or consent of that other; but it is an exception established by the law-merchant.

The reason why bills of exchange are sometimes accepted or paid for honor is to save the party for whose honor this is done, from the very heavy damages of a protested bill.

SECTION IX.

JUDGMENT NOTES.

IN many of our States it is a common practice to give a promissory note, and include in it a "confession of judgment," for the amount. A suit may then be brought on the note as soon as it is due and unpaid, and a judgment taken out at once without the delay of a trial; and execution may issue on the judgment. Sometimes by the same note the promisor waives or renounces the benefit or protection of all exemption laws; and then the execution may be satisfied from any of his property that the sheriff can find.

(77.)

Form of a Judgment Note with Waiver.

\$ _____, 19____
 (Time.) _____ after date, for value received, I promise to pay _____ or bearer, _____ dollars, with interest, and without defalcation or stay of execution. And I do hereby confess judgment for the above sum, with interest and costs of suit, a release of all errors, and waiver of all rights to inquisition and appeal, and to the benefit of all laws exempting real or personal property from levy and sale.

(Signature.)

Sometimes, in addition to the above, the same note has below it a power of attorney, authorizing the attorney whose name is put into the blank left for that purpose to appear in court for the promisor, and confess judgment. Sometimes the power is given to an attorney whom the parties agree upon, and then no other attorney can confess the judgment. It is, however, far more usual, and better, to insert the name of an attorney, and add, as in the following form, "or any attorney of any court of record."

Sometimes the note is followed on the same paper by a power to confess judgment, and a waiver of all right of exemption; both the power and the waiver extending beyond the above written note, and covering other notes and bonds and other evidence of debt.

(78.)

Judgment Note with fuller Waiver, and Power of Attorney.

\$ _____, 19____
 For value received, I, _____, promise to pay to the order of _____ the sum of _____ dollars, with interest, in _____ (time).

(Signature.)

Know all Men by these Presents, That whereas, _____, the subscriber, is now justly indebted to _____ upon a certain promissory note, bearing even date herewith, for the sum of _____ dollars, and _____ cents, payable to the order of the said _____ and due _____, and may from time to time hereafter become further or otherwise justly indebted to the said _____, upon bonds, promissory notes, due-bills, and other written evidences of debt, made, or to be made, indorsed or accepted by him and held or owned by the said _____ or the assignee or assignees hereof.

Now, Therefore, in consideration of the premises, and of the sum of one dollar to me paid by the said _____ the receipt whereof is hereby acknowledged, I do hereby make, constitute, and appoint _____ or any attorney of

any court of record, to be my true and lawful attorney, irrevocable, for me and in my name, place, and stead, to appear in and before any court of record, either in term-time or in vacation, in any of the States or Territories of the United States, at any time after the maturity of said note, or of any such bond, promissory note, due-bill, or other written evidence of debt, so already made or to be made, indorsed or accepted by me as aforesaid, respectively, to waive service of process, and confess a judgment in favor of the said _____, his executors, administrators, assignee or assignees, or the legal holder or holders of said note or any one or more of such bonds, promissory notes, due-bills, or other written evidences of debt, as aforesaid, for so much money as shall by the same appear to be due or owing thereon, with interest thereon according to the tenor and effect thereof respectively, together with costs; also, for _____ dollars attorney's fees, to be added to the amount due or owing on entering up judgment; also, to file a cognovit for the amount that may be so due or owing, including attorney's fees as aforesaid, with an agreement therein that no writ of error or appeal shall be prosecuted upon the judgment entered up by virtue hereof, nor any bill in equity filed to restrain or in any manner interfere with the operation of said judgment, or any execution issued or to be issued thereon, and to release all errors that may intervene in the entering-up of any such judgment or issuing any execution thereon, and to consent, stipulate, and agree, that any execution issued or to be issued upon such judgment, may be immediately levied upon, and satisfied out of any personal property which I may have or own, and to waive and relinquish all my right to have my personal property last taken and levied upon to satisfy such execution, and also to consent that execution may issue upon any such judgment immediately. Hereby ratifying and confirming all that my said attorney may do by virtue hereof.

And, in consideration of the premises, I do hereby stipulate, covenant, and agree with the said _____, his executors, administrators, and with the assignee, assignees, or the legal holder or holders of said note, or of any one or more of such bonds, promissory notes, due-bills, or other written evidences of debt as aforesaid, that any execution so issued or to be issued as aforesaid, may first be levied upon and satisfied out of any personal property which I may have or own, hereby expressly waiving all right to have my personal property last taken and levied upon to satisfy such execution.

Witness my hand and seal this _____ day of _____ A. D. 19____.

(Signature.) (Seal.)

In Presence of

(79.)

Notarial Protest.

UNITED STATES OF AMERICA.

STATE OF _____

CITY (OR TOWN) OF _____ AND COUNTY OF _____

{ ss.

BE IT KNOWN that on this _____ day of _____ in the year of our Lord one thousand nine hundred and _____, at the request of _____ I,

____ Notary Public, duly commissioned and sworn, residing in the City (or Town) of _____ aforesaid, did present the original (*note or bill of exchange*) hereunto annexed to _____ and demanded (*payment or acceptance*) thereof, which was refused, stating _____.

WHEREUPON, I, the said Notary, at the request aforesaid, did PROTEST, and do hereby publicly and solemnly PROTEST against the Drawers and Indorsers of the said (*note or bill*) and all others concerned, for all exchange, re-exchange, all costs, damages, and interest, incurred or to be incurred for want of (*payment or acceptance*) of the same.

And I, the said Notary, do hereby certify, that on the same day I deposited in the Post Office at _____, Notices for the following persons: _____

THUS DONE AND PROTESTED, in the City (or Town) of _____ aforesaid and my Notarial Seal affixed, the day and year above written.

(Seal.)

Notary Public.

(80.)

Notice of Protest.

_____, _____, 19____

Sir:

Please take notice, that a (*note made by, or bill of exchange drawn by* _____ *on* _____) for _____ dollars, dated _____ 1900, payable _____ and indorsed by you, is duly protested for non-payment (*or acceptance*), payment (*or acceptance*) having been demanded and refused, and the holders look to you for the payment thereof.

Respectfully,

To _____

Notary Public.

ABSTRACT OF THE DAYS OF GRACE AND HOLIDAYS IN ALL THE STATES AND TERRITORIES.

ALABAMA.

The uniform negotiable instruments law has been adopted and days of grace are abolished. Sundays, Christmas Day, January 1st and 19th, February 22d, April 13th, and 26th, June 3rd, July 4th, Oct. 12th, the first Monday of September, the second Thursday in October, Thanksgiving Day, and Mardi Gras are holidays. If any other holiday falls on Sunday, the Monday following is a holiday. Paper falling due on a holiday is payable on the next succeeding business day.

ALASKA.

Uniform negotiable instrument act adopted and grace abolished. Holidays, Jan. 1st, Feb. 12th and 22d, March 30th, May 30th, July 4th, Oct. 18, Dec. 25th, Labor Day, Thanksgiving and general election days.

ARIZONA.

The uniform negotiable instruments law has been adopted and days of grace are abolished. January 1st, February 12th, and 22d, May 30th, July

4th, the first Monday in September, October 12th, December 25th, Sundays, Thanksgiving, Arbor and election days are holidays. When any other holiday falls on Sunday, the following day is treated as a legal holiday. Notes, checks, etc., payable on a holiday are due and collectible on the day following.

ARKANSAS.

Negotiable instruments are governed by the rules of commercial law. Sundays, January 1st and 19th, February 22d, June 3d, July 4th, December 25th, the first Monday in September, general election and Thanksgiving days are legal holidays, and all paper falling due on either of said days is payable on the preceding day.

CALIFORNIA.

The uniform negotiable instruments law has been adopted and days of grace are abolished. All contracts to be performed on a holiday may be performed on the next business day. Sundays, January 1st, February 12th and 22d, May 30th, July 4th, September 9th, the first Monday of September, October 12th, Christmas, general election days, and all days appointed by the Governor or President as days of public fast, Thanksgiving, or holiday, are legal holidays. When any other holiday falls on Sunday, the Monday following is treated as a holiday.

COLORADO.

The uniform negotiable instruments law has been adopted and days of grace are not allowed. Sundays, January 1st, February 12th and 22d, May 30th, July 4th, the first Monday in September, election day in November, December 25th, Thanksgiving and fast days are holidays, and bills and notes due on any of said days are payable on the next succeeding business day. When any holiday falls on Sunday, the Monday following is treated as a holiday.

CONNECTICUT.

The uniform negotiable instruments law has been adopted and days of grace are abolished. Paper falling due on Sunday, January 1st, February 12th, February 22d, May 30th, July 4th, the first Monday of September, October 12th, December 25th, Thanksgiving or fast days, is payable on the business day next succeeding. A holiday falling on Sunday is observed on Monday. Saturday afternoon is a holiday for banking purposes, and paper maturing on Saturday is payable on Monday, but instruments payable on demand may be presented for payment before twelve o'clock.

DELAWARE.

The uniform negotiable instruments law has been adopted and days of grace are abolished. Sundays, January 1st, February 12th and 22d, May 30th, July 4th, the first Monday of September, October 12th, December 25th, general election day, Thanksgiving, Saturday afternoon in New Castle and Kent Counties, are public holidays, and negotiable instruments due on such day or on the following day, when any holiday falls on Sunday, are payable

on the next business day. Paper maturing on a half-holiday Saturday is payable on the next succeeding business day.

DISTRICT OF COLUMBIA.

The uniform negotiable instruments law is in effect and days of grace are abolished. Sunday, January 1st, February 22d, May 30th, July 4th, December 25th, the first Monday of September, inauguration day, Thanksgiving and fast days are public holidays, and notes falling due thereon are deemed to have matured on the business day following. When any other holiday falls on Sunday the following day is a holiday. Saturday afternoon is a holiday for banking purposes.

FLORIDA.

The uniform negotiable instruments law has been adopted and days of grace are abolished. Sundays, January 1st and 19th, February 22d, April 26th, June 3d, July 4th, 1st Monday of September, 2nd Friday of October, December 25th, Good Friday, Thanksgiving, general election days, and Shrove Tuesday in all cities or towns having a Carnival Association, are public holidays, and notes falling due on such days must be presented on next succeeding business day. When any other holiday falls on Sunday, the following Monday is a holiday. Notes, etc., falling due Saturday are payable on Monday, but if on demand may be presented Saturday before twelve.

GEORGIA.

Days of grace are abolished on all commercial paper. Sundays, January 1st and 19th, February 22d, April 26th, June 3d, July 4th, December 25th, the first Monday of September, and days of public Thanksgiving and fast are holidays. Notes, etc., falling due on a holiday are payable on the business day next succeeding. When holiday falls on Sunday, Monday is observed.

HAWAII.

The uniform negotiable instruments law has been adopted and days of grace are abolished. Bills and notes falling due on Sunday or a holiday, or on a Saturday half-holiday, are payable on the next succeeding business day, except that those payable on demand may be presented on Saturday before twelve o'clock. Holidays are: January 1, February 22, May 30, June 11, July 4, December 25, the first Monday and third Saturday in September, and any day of thanksgiving or fasting appointed by the President of the United States, and any holiday appointed by the Governor.

IDAHO.

The uniform negotiable instruments law has been adopted and days of grace are abolished. Sundays, January 1st, February 22d, May 30th, June 15th, July 4th, October 12th, December 25th, the first Monday in September, election, fast, and Thanksgiving days are holidays. Paper due on a holiday is payable on the next succeeding business day. Paper falling due on Saturday is payable on Monday, but if on demand, may be presented Saturday before noon.

ILLINOIS.

The uniform negotiable instruments law is in force and days of grace are not allowed. Holidays are Sundays, January 1st, February 12th and 22d, May 30th, July 4th, October 12th, December 25th, the first Monday of September, general election days, and any day appointed by the Governor or President as a day of fast or thanksgiving; and paper falling due on any of said days is payable on the following business day. If holiday falls on Sunday, Monday is observed. Paper falling due on Saturday is payable on Monday, except that if due on demand it may be presented Saturday before twelve.

INDIANA.

The uniform negotiable instruments law has been adopted and days of grace are abolished. Sundays, January 1st, February 12th and 22d, May 30th, July 4th, the first Monday in September, October 12th, Thanksgiving Day, Christmas Day, and general State or national election days are legal holidays, and in cities of 35,000 or more Saturday after 12 o'clock noon is a legal half-holiday. When a holiday falls on Sunday, Monday is observed. Notes, etc., falling due on Sunday or a legal holiday are payable on the next succeeding business day.

IOWA.

The uniform negotiable instruments law has been adopted and days of grace are abolished. Holidays are Sundays, January 1st, February 22d, May 30th, July 4th, the first Monday of September, Christmas Day, general election day, and any day appointed by the Governor or President a day of fast or thanksgiving, and notes and bills due on the same are payable on the following business day.

KANSAS.

The uniform negotiable instruments law has been adopted and days of grace are abolished. Sundays, January 1st, February 22d, May 30th, July 4th, Christmas, New Year's Day, Thanksgiving and fast days, and the first Monday of September, are holidays; notes falling due on a holiday are payable on the next succeeding business day. When any holiday falls on Sunday the next business day is observed. Paper falling due Saturday is payable Monday, unless it is payable on demand, when it may be presented before twelve Saturday.

KENTUCKY.

The uniform negotiable instruments law is in effect, and no grace is allowed. Sundays, January 1st, February 12th and 22d, May 30th, July 4th, October 12th, the first Monday in September, Christmas Day, and days of public thanksgiving or fasting are holidays; notes falling due thereon are payable on the next succeeding business day. When any of said days occurs on Sunday, the following day is to be observed.

LOUISIANA.

The uniform negotiable instruments law has been adopted, and days of grace are abolished. Holidays are Sundays, January 1st and 8th, February 22d, Good Friday, June 3d, July 4th, the 1st Monday in September, October 12th, November 1st, December 25th, Thanksgiving, all general election days, and in the Parish of Orleans, Mardi Gras. In towns and cities of over 10,000 Saturday is a half-holiday, and whenever a legal holiday falls on Sunday the succeeding day is a holiday, and all notes, etc., requiring protest are payable on first full business day after maturity. Holidays and half-holidays not included in time for notice of non-acceptance or non-payment. Notes, etc., falling due on half-holiday may be presented on next succeeding business day.

MAINE.

Days of grace are abolished except on sight drafts. Sundays, public Thanksgiving, January 1st, February 22d, April 19th, May 30th, July 4th, the first Monday of September, and December 25th, are holidays, and negotiable instruments falling due on the same are payable on the succeeding business day. A holiday falling on Sunday is observed on Monday. Saturday after twelve is a holiday for banking purposes.

MARYLAND.

The uniform negotiable instruments law has been adopted and days of grace are abolished. January 1st, February 22d, March 25th, May 30th, July 4th, September 12th, October 12th, December 25th, the first Monday in September, Good Friday, days of public Thanksgiving, and general election days, and the day following when any of these falls on Sunday, are public holidays, and paper falling due on any of said days is payable on the business day next succeeding. Paper falling due on Saturday is payable on the next succeeding business day, but if on demand may be presented on Saturday before 12 o'clock.

MASSACHUSETTS.

The uniform negotiable instruments law is in effect, and grace is not allowed except on sight drafts and bills of exchange payable within the State. Instruments falling due on Sunday or a holiday are payable on the next succeeding business day. Those falling due on Saturday are to be presented on the next succeeding business day, except that if payable on demand they may be presented for payment before 12 o'clock. Holidays are January 1st, February 22d, April 19th, May 30th, July 4th, October 12th, Thanksgiving, Christmas, the first Monday in September, and the following day when any of these falls on Sunday.

MICHIGAN.

The uniform negotiable instruments law has been adopted and no days of grace are allowed. Bills and notes maturing on Sunday or a holiday are payable on the next succeeding business day. Holidays are January 1st, February 22d, May 30th, July 4th, the first Monday of September, Christmas, general election days, and any day appointed as a day of fasting or Thanksgiving. When any holiday falls on Sunday the day following is a holiday. Saturday

afternoon is a holiday for banking purposes, and notes falling due Saturday are payable on business day following.

MINNESOTA.

The uniform negotiable instruments law has been adopted and days of grace are abolished. Notes payable on Sunday, Thanksgiving, general election day, the first Monday of September, Good Friday, Christmas, New Year's Day, February 12th, February 22d, May 30th, and July 4th, or on the following day when either of the last six falls on Sunday, and notes due on Saturday are payable on the business day next succeeding; but demand notes may be presented Saturday before noon.

MISSISSIPPI.

Grace is allowed on bills of exchange, notes, and drafts given for a sum certain. Notes, etc., falling due on Sunday, January 1st, April 26th, June 3d, July 4th, Thanksgiving, or Christmas Day, are payable on the secular day next succeeding.

MISSOURI.

The uniform negotiable instruments law is in force and grace is abolished. Sundays, January 1st, February 22d, May 30th, July 4th, first Monday of September, Christmas, Thanksgiving, and the day of general or primary elections, are public holidays, and negotiable instruments due thereon are payable on the next succeeding business day. Holiday falling on Sunday is observed on Monday. In cities of over 100,000 inhabitants, Saturday is a half-holiday, and notes falling due on that day are payable Monday, but if on demand may be presented before noon.

MONTANA.

The uniform negotiable instruments law is in effect and days of grace are abolished. Notes falling due on Sunday, January 1st, February 12th and 22d, May 30th, July 4th, October 12th, December 25th, the first Monday in September, election, fast or Thanksgiving days, are payable on the day following. A holiday falling on Sunday is observed on Monday.

NEBRASKA.

The uniform negotiable instruments law has been adopted and grace is not allowed. Holidays falling on Sunday are observed on Monday, and negotiable instruments falling due on Sunday or a holiday are payable on the next business day. Holidays are January 1st, February 12th and 22d, April 22d, May 30th, July 4th, October 12th, December 25th, the first Monday in September, Thanksgiving and Fast Days. Saturday is a half-holiday and only demand notes are presentable before twelve o'clock.

NEVADA.

The uniform negotiable instruments law has been adopted and days of grace are abolished. Notes, etc., payable on a holiday become due the next succeeding business day. Holidays are Sundays, January 1st, February 12th

and 22d, May 30th, July 4th, first Monday in September, October 31st, Thanksgiving, Christmas, and days of primary or general election.

NEW HAMPSHIRE.

The uniform negotiable instruments law has been adopted and grace is abolished except on sight drafts. Notes payable on Sunday, Thanksgiving, Fast, the general state election, February 22d, May 30th, July 4th, first Monday of September, Christmas, or on the following day when either of these days falls on Sunday, are due on the business day next succeeding. Saturday is a half-holiday and only demand notes are presentable before twelve o'clock.

NEW JERSEY.

The uniform negotiable instruments law has been adopted and days of grace are abolished. Notes, etc., falling due on Sunday, Christmas, New Year's Day, Good Friday, February 12th and 22d, May 30th, July 4th, the first Monday of September, October 12th, general election days, and any day of public Thanksgiving or fasting are payable on the next succeeding business day. Holidays falling on Sunday are observed on Monday. Saturday is a half holiday and only demand notes are presentable before twelve o'clock.

NEW MEXICO.

The uniform negotiable instruments law has been adopted and no grace is allowed. Notes, etc., falling due on Sunday or a holiday, are payable on the next succeeding business day. January 1st, February 22d, May 30th, July 4th, the first Monday in September, October 12th, December 25th, Thanksgiving, general election days, and fast days are legal holidays. Saturday is a half-holiday and only demand notes are presentable before twelve o'clock.

NEW YORK.

The uniform negotiable instruments law is in effect and days of grace are abolished. Sundays, January 1st, February 12th, February 22d, May 30th, July 4th, the first Monday in September, October 12th, December 25th, Saturday afternoons, any general election day, and any day appointed by the Governor or President as a day of Thanksgiving or fasting are holidays. Bills and notes falling due on a holiday or Saturday are payable on the next secular or business day; but demand notes due on Saturday may be presented on that day before 12 o'clock. Other holidays falling on Sunday are observed on Monday.

NORTH CAROLINA.

The uniform negotiable instruments law has been adopted and grace is allowed only on sight drafts. Sundays, January 1st and 19th, February 22d, May 10th, May 20th, July 4th, the first Monday in September, December 25th, Thanksgiving Day, and Saturday afternoons are public holidays. Bills and notes falling due on a holiday or Saturday are payable on the next business day; but those falling due on Saturday may be presented on that day before 12 o'clock. Other holidays falling on Sunday are observed on Monday.

NORTH DAKOTA.

The uniform negotiable instruments law has been adopted and days of grace are abolished. Notes and bills due on Sundays and holidays are payable on next business day. January 1st, February 12th, February 22d, July 4th, December 25th, May 30th, first Monday in September, general election and Thanksgiving days, and Sundays are holidays. Other holidays falling on Sunday are observed on Monday.

OHIO.

The uniform negotiable instruments law is in force and days of grace are abolished. January 1st, February 22d, May 30th, July 4th, the first Monday in September, October 12th, December 25th, general election day afternoon, Saturday afternoon, and any day appointed as a day of fasting or Thanksgiving, are holidays, and notes, etc., due on such days, or on Sundays, are payable on the business day next succeeding; if any holiday falls on Sunday, the following Monday is a holiday. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, but if payable on demand, may, at the option of the holder, be presented on Saturday before noon.

OKLAHOMA.

Uniform negotiable instruments law adopted, and days of grace abolished. Holidays are Sunday, January 1st, February 22d, May 30th, July 4th, October 12th, December 25th, first Monday in September, general election, fast and Thanksgiving days. Holiday falling on Sunday is observed on Monday. Notes due on holiday are payable on next business day.

OREGON.

The uniform negotiable instruments law has been adopted and days of grace are abolished. Sundays, January 1st, February 12th and 22d, May 30th, July 4th, October 12th, December 25th, the first Monday of September, days of general election, fast and Thanksgiving, are holidays. Notes, etc., payable on a holiday are due on the next business day.

PENNSYLVANIA.

The uniform negotiable instruments law is in force and days of grace are abolished. Sundays, January 1st, February 12th and 22d, Good Friday, May 30th, July 4th, first Monday in September, October 12th, December 25th, first Tuesday after the first Monday in November (election day), fast and Thanksgiving days, are public holidays, and negotiable paper due on any of said days is payable on the next succeeding secular day. Saturday afternoons are half-holidays, and notes payable on Saturday are for purposes of protest considered as if payable on Monday, but demand notes may be presented Saturday before noon. When a holiday falls on Sunday, it is observed on Monday.

THE PHILIPPINES.

The uniform negotiable instruments law has been adopted and days of grace are abolished. Bills and notes maturing on Sunday, a holiday or a

Saturday half-holiday are payable on the next succeeding business day, but if on demand may be presented on Saturday before twelve o'clock. Holiday falling on Sunday is observed on Monday. Holidays are: Sunday, January 1, February 22, Thursday and Friday of Holy Week, May 1, May 30, July 4, Aug. 13, Thanksgiving, December 25, December 30, general election, and days of special elections designated by the Governor-General, and any other day designated by him as a holiday.

PORTO RICO.

Days of grace are not allowed. Holidays are: Sundays, January 1, February 22, March 22, Good Friday, May 30, July 4, July 25, general election days, and days appointed by the President of the United States or by the Governor or the Legislative Assembly as days of fasting or Thanksgiving or as holidays. When any other holiday falls on Sunday, Monday is observed. Bills and notes falling due on a holiday are payable on the next succeeding business day.

RHODE ISLAND.

The uniform negotiable instruments law is in effect and grace is allowed only on sight drafts. January 1st, July 4th, February 22d, May 30th, and Christmas Day, or when either of said days falls on Sunday the day following it, the second Friday in May, the first Monday of September, October 12th, the Tuesday after the first Monday in November, days of Thanksgiving or fast are holidays, and payment of all notes, checks, and bills, due and payable on such holidays, is to be made on the secular day next succeeding. Saturday after twelve o'clock is a holiday for bank purposes.

SOUTH CAROLINA.

The uniform negotiable instruments law has been adopted and days of grace abolished. Paper falling due on Saturday or on a holiday is payable on next business day; but instruments payable on demand may be presented on Saturday before twelve o'clock if that entire day is not a holiday. Holidays are January 1st and 19th, February 22d, May 10th, June 3d, July 4th, December 25th, the first Monday in September and days of Thanksgiving and general election.

SOUTH DAKOTA.

Uniform negotiable instruments law adopted and days of grace abolished. Notes due on holidays are payable on next business day. January 1st, February 22d, July 4th, December 25th, May 30th, and days of general election and Thanksgiving days are holidays. If any of the first four falls on Sunday, the Monday following is a holiday.

TENNESSEE.

The uniform negotiable instruments law is in force and days of grace are abolished. January 1st, January 19th, February 22d, May 30th, June 3d, July 4th, Good Friday, first Monday in September, December 25th, Thanksgiving Day, and general election days are holidays. Holidays falling on

Sunday are observed on Monday. Notes, etc., falling due on Sunday or a holiday are payable on the next succeeding business day. Those falling due on Saturday are payable the next succeeding business day, except that those payable on demand may at the option of the holder be presented before 12 o'clock on Saturday, when that entire day is not a holiday.

TEXAS.

Grace is allowed on all negotiable notes and bills. Sundays, January 1st, February 22d, March 2d, April 21st, July 4th, December 25th, the first Monday in September, general election days, and days of public fasting or thanksgiving are holidays. If a holiday occurs on Sunday, the next day is observed as a holiday, but presentment of commercial paper for acceptance or payment in such case may be made on the Saturday previous.

UTAH.

The uniform negotiable instruments law has been adopted and grace is not allowed. Sundays, January 1st, February 12th and 22d, April 15th, May 30th, July 4th, July 24th, October 12th, December 25th, the first Monday in September, Fast and Thanksgiving days are holidays. Holidays falling on Sunday are observed on Monday. Notes, etc., falling due on a holiday are payable on the next succeeding business day. Those falling due on Saturday are payable on Monday, except that those payable on demand may at the option of the holder be presented before 12 o'clock on Saturday.

VERMONT.

Days of grace are abolished. Notes falling due on a holiday are payable on the following business day. Sundays, January 1st, February 22d, July 4th, May 30th, August 16th, October 12th, December 25th, the first Monday in September, fast and Thanksgiving days are legal holidays. When any other holiday falls on Sunday the Monday following is a holiday.

VIRGINIA.

The uniform negotiable instruments law is in effect and days of grace are abolished. January 1st and 19th, February 22d, May 30th, July 4th, the first Monday in September, December 25th, days of public Thanksgiving or fast are holidays, and notes, etc., falling due thereon or on Saturdays are payable on the secular day next succeeding. When any holiday falls on Sunday the Monday following is observed as a holiday.

WASHINGTON.

The uniform negotiable instruments law has been adopted and days of grace are abolished. Sundays, January 1st, February 12th and 22d, May 30th, July 4th, October 12th, December 25th, the first Monday in September, days of general election and Thanksgiving are holidays, and notes falling due thereon are payable on the next succeeding secular day.

WEST VIRGINIA.

The uniform negotiable instruments law has been adopted and days of grace are abolished. Notes, etc., falling due on Sunday or a holiday are pay-

able on the next succeeding business day; those falling due Saturday, if not paid before noon, are payable Monday. January 1st, February 12th and 22d, July 4th, May 30th, October 12th, December 25th, the first Monday in September, election and Thanksgiving days are holidays. A holiday falling on Sunday is observed on Monday.

WISCONSIN.

The uniform negotiable instruments law has been adopted and days of grace are abolished. Negotiable paper falling due on Sunday, January 1st, February 22d, May 30th, July 4th, December 25th, Thanksgiving Day, Labor Day, general election days, is payable on the secular day next succeeding. Holidays falling on Sunday are observed on Monday.

WYOMING.

The uniform negotiable instruments law is in force and grace is not allowed. January 1st, February 12th and 22d, May 30th, July 4th, December 25th, Arbor Day, general election day, and Thanksgiving Day are holidays. If such holiday falls on Sunday, the Monday following is a legal holiday. Notes due on holiday or on Saturday or Sunday are payable on next business day, but demand notes may be presented Saturday before noon.

CHAPTER XVI.

AGENCY.

SECTION I.

AGENCY IN GENERAL.

THE relation of principal and agent implies that the principal acts by and through the agent, so that the acts in fact of the agent are the acts in law of the principal; and only when one is authorized by another to act for him in this way, and to this extent, is he an agent. One who is disqualified from contracting on his own account may act as the agent of another; thus infants, married women, and aliens may act as agents for others.

A principal is responsible for the acts of his agent, not only when he has actually given full authority to the agent thus to represent and act for him, but when he has, by his words, or his acts, or both, caused or permitted the person with whom the agent deals to believe him to be clothed with this authority. And

a man may be thus held as a principal, either because he has in some way authorized *all* persons to believe that he has constituted some other man his agent, or because he has authorized only the party dealing with the supposed agent to so believe. For all responsibility rests upon two grounds, which are commonly united, but either of which alone is sufficient; one, the giving of actual authority; the other, such appearing to give authority as justifies those who deal with the supposed agent in believing that this authority was given him.

A general agent is one authorized to represent his principal in all his business, or in all his business of a particular kind. A particular agent is one authorized to do only a specific thing or a few specified things. It is not always easy to discriminate between these; but it is often important, by reason of the rule that the authority of the *general* agent is measured by the usual scope and character of the business he is empowered to transact. By appointing him to do that business, the principal is considered as saying to the world that his agent has all the authority necessary to the doing of it in the usual way. And if the agent transcends his actual authority, but does not go beyond the natural and usual scope of the business, the principal is bound, unless the party with whom the general agent dealt knew that the agent exceeded his authority. For if an agent does only what is natural and usual in transacting business for his principal, and yet goes beyond the limits prescribed by him, it is obvious that the principal must have put particular and unusual limitations to his authority; and these cannot affect the rights of a third party who deals with the agent in ignorance of these limitations. But, on the other hand, the rule is, that, if an agent who is specially authorized to do a specific thing exceeds his authority, the principal is not bound, because the party dealing with such agent must inquire for himself, and at his own peril, into the extent and limits of the authority given to the agent. Here, however, as before, if the party dealing with the agent, and inquiring, as he should, into his authority, has sufficient evidence of this authority furnished to him by the principal, and, in his dealings with the agent, acts within the limits of the authority thus proved, he cannot be affected by any reservations and limitations made secretly by the principal, and wholly unknown to the person dealing with the agent.

SECTION II.

HOW AUTHORITY MAY BE GIVEN TO AN AGENT.

It may be given under seal, or in writing without seal, or orally. If given by a written instrument, this instrument is called a Power of Attorney, of which we shall give various forms at the close of this chapter. An oral appointment authorizes the agent to make a written contract, but not to execute instruments under seal. But an instrument under seal, signed and sealed in the principal's presence, and by his request and authority, will be regarded as the principal's deed, made by himself. One employed by another to act for him in the usual trade or business of the agent, as auctioneer, broker, or the like, acquires thereby authority to do all that is necessary or usual in that business. And if a person puts his goods into the custody of another whose ordinary and usual business it is to sell such goods, he authorizes the whole world to believe that this person has them for sale, and any person buying them honestly, in this belief, would hold them. Therefore, if fraudulent by-bidding be procured or permitted by the auctioneer, even without the knowledge of the owner of the goods, the owner is answerable for this fraud of his agent, and the buyer has a right to refuse to take the goods. So neither party is bound until the agreement of sale is completed. Therefore the auctioneer may withdraw any article, and a bidder may withdraw any bid, until the article is "knocked down," but not afterwards; for then the sale is completed, and the property in (or ownership of) the article passes to the buyer.

If one is repeatedly employed to do certain things,—as a wife or a son to sign bills or receipts; or a domestic servant to make purchases; or a merchant or broker to sign policies, and the like,—in all these cases, one dealing with the person thus usually employed, is justified in believing him authorized to do those things with the assent and approbation of his employer, and in the same way in which he has done them, but not in any other way. Thus, if a servant is usually employed to buy, but always for cash, this implies no authority to buy on credit.

An agency may be confirmed and established, and in fact created, by a subsequent adoption and ratification; and a ratification relates back to the original transaction. A corporation is bound by the ratification of an agent's acts, in the same man-

ner as an individual would be. But no ratification is effectual to bind the principal, unless made by the principal with a knowledge of all the material facts. And there can be ratification only where the act is done by one purporting to be an agent, or by an assumed authority. Generally, one who receives and holds a beneficial result of the act of another as his agent, is not permitted to deny such agency; and in some cases this is extended even to acts of such agent under seal.

Thus, if an agent sell under seal property of a supposed principal, an individual or a corporation, and receive payment, and hand this over to the principal, if the principal could show that the agent had no authority, he might avoid the sale, and recover the property; but he could not do this and also hold the money paid for it. And if one, knowing that another has acted as his agent, does not disavow the authority as soon as he conveniently can, but lies by and permits a person to go on and deal with the supposed agent, or to lose an opportunity of indemnifying himself, this is an adoption and confirmation of the acts of the agent. Nor can a supposed principal adopt a part for his own benefit, and repudiate the rest of the supposed agency; he must adopt the whole or none.

If an agent makes a sale, and his principal ratifies the sale, he thereby ratifies the agent's representations made at the time of the sale and in relation to it, and is bound by them.

The whole subject of mercantile agency is influenced and governed by mercantile usage. Thus, as to the difference between factors and brokers, the law adopts a distinction usual among merchants, although it may not always be regarded by them. A factor is a mercantile agent for sales and purchases, who has possession of the goods; a broker is such agent, but without possession of the goods. Hence, a factor may act for his principal, and yet in his own name, because the actual owner, by delivering to him the goods, gives to him the appearance of an owner; but a broker must act only in the name of his principal.

A purchaser of goods from a factor may set off against the price a debt due from the factor, unless he buys the goods knowing that they are another's; not so, if the purchaser buy from a broker. Again, a factor has a lien on the goods for his claims against his principal; but a broker generally has not.

One may be a factor as to all rights and duties, who is called a broker; as an exchange-broker, who has notes for sale on discount, certificates of stock, etc., delivered into his possession; and such broker, being actually a factor, would have a lien on the policies of insurance or other documents held by him, for his commissions and charges about those documents.

A cashier of a bank, or other official person, may be an agent for those whose officer he is, or for others who employ him. He has, without special gift, all the authority necessary or usual to the transaction of his business. But he cannot bind his employers by any unusual or illegal contract made with their customers. The same law, and the same qualifications, apply to the case of officers of railroad companies, or other corporations. Their acts bind their employers or companies, so far as they have authorized those acts, or have justified those who dealt with the officers in believing that the officers possessed such authority, but no further.

Nor would the acts or permissions of such officer have any validity if they violate his official duties, and are certainly and obviously beyond his power, even if sanctioned by his directors; as if the cashier of a bank permitted overdrawing, or the like. And parties who deal with such agent in such a transaction would be unable to hold the principal; for the law would consider them as knowing that the officer could have no right to do such things.

Therefore, the general agent of a corporation, clothed with a certain power by the charter or the lawful acts of the corporation, may use that power for an authorized, or even a prohibited purpose, in his dealings with an innocent third party, and render the corporation liable for his acts, if they be really within the power given him, or seem to be within it by the fault or act of the corporation; but not otherwise. Thus, a treasurer of a corporation has no power to release a claim which belongs to the corporation.

SECTION III.

EXTENT AND DURATION OF AUTHORITY.

A GENERAL authority may continue to bind a principal after its actual revocation, if the agency were known, and the revocation be wholly unknown to the party dealing with the agent, without that party's fault.

An authority to sell implies an authority to sell on credit, if that be usual, otherwise not; and if an agent sells on credit without any authority, or by exceeding his authority, the principal may claim his goods from the purchaser, or hold the agent responsible for their price. Neither an auctioneer, nor a broker employed to sell, has any right to sell on credit, unless this authority is given him expressly, or by some known and established usage. And the agent is generally responsible if he mixes the goods of his principal with his own, in such a manner as to confuse them together, or takes a note payable to himself, unless this be authorized by the usage of the trade.

If the agent (or factor) takes a note payable to himself, and becomes bankrupt, such note belongs to his principal, and not to the agent's assignees.

A power to sell gives a power to warrant, where there is a distinct usage of making such sales with warranty, and the want of authority to warrant is unknown to the purchaser, without his fault; and not otherwise. Thus, it has been held that an authority to sell a horse implies an authority to sell with warranty, because horses are usually sold with warranty. A general authority to sell goods carries with it an authority to sell by sample. General authority to transact business, or even to receive and discharge debts, does not enable an agent to accept or indorse bills or notes, so as to charge his principal. Indeed, special authorities to indorse are construed strictly. But this authority may be implied from the previous usage of the agent, recognized and sanctioned by the principal. Where a confidential clerk was accustomed to draw bills for his employer, and this employer had authorized him in one instance to indorse, and on two other occasions had received money obtained by his indorsement of his employer's name, the court held that a jury might consider the clerk authorized generally to indorse for his employer. An agent to receive cash has no authority to take bills or notes, except bank-notes.

If an agent sells and makes a material representation which he believes to be true, and the principal knows it to be false, and does not correct it, this is the fraud of the principal, and avoids the sale.

If an agency be justly implied from general employment, it may continue so far as to bind the principal after his withdrawal

of the authority, if that withdrawal be not made known, in such way as is usual or proper, to all who deal with the agent as such.

Revocation, generally, is always in the power and at the will of the principal. His death operates of itself a revocation. But the death of an agent does not revoke the authority of a sub-agent appointed by the agent under an authority given him by the principal. If the power be coupled with an interest,—as where one gives a person power to sell goods and apply the money for his own benefit, or the like,—or if it is given for a valuable consideration, and the continuance of the power is requisite to make the interest available, then it cannot be revoked at the pleasure of the principal. Marriage of a woman revokes a revocable authority given by her while single.

If an agent to whom commercial paper is given for collection be negligent or mistaken about it, and so in fault towards his principal, the measure of his responsibility is the damage actually sustained by his principal.

If a bank receive notes or bills for collection, although charging no commission, the possible use of the money is consideration enough to make them liable as agents having compensation; that is, liable for any want of due and legal diligence and care. But if the bank exercise proper skill and care in the choice of a collecting agent, or of a notary, or other person or officer, to do what may be necessary in relation to the paper committed to them, the bank is not liable for *his* want of care or skill.

In general, an exigency, or even necessity, which would make an extension of the power of an agent very useful to his employer, will not give that extension. A master of a ship, however, may sell it, in case of necessity, or pledge it by bottomry, to raise money. But this is a peculiar effect of the law-merchant, to be considered more fully in the chapter on the Law of Shipping; and no such general rule applies to ordinary agencies.

SECTION IV.

THE EXECUTION OF AUTHORITY.

GENERALLY, an authority must be conformed to with great strictness and accuracy; otherwise, the principal will not be bound, although the agent may be bound personally. But the

old strictness is now abated considerably; and, whatever be the form or manner of the signature of a simple contract, it will be held to bind the principal, if that were the certain and obvious intent. In the case of sealed instruments, the ancient severity is more strictly maintained.

That the authority must be conformed to with strict accuracy, in all matters of substance, is quite certain; but the whole instrument will be considered, in order to ascertain the intention of the parties and the extent of authority. A power given to two cannot be executed by one; but some exception to the rule as to joint power exists in the case of public agencies, and also in many commercial transactions. Thus, either of two factors—whether partners or not—may sell goods consigned to both. And where there are joint agents, whether partners or not, notice to one is notice to both.

In commercial matters, usage, or the reason of the thing, may sometimes seem to add to an authority; so far, at least, as is requisite for the full discharge of the duty committed to the agent in the best and most complete manner. Thus, it is held that an agent to get a bill discounted may indorse it in the name of his principal, unless he is expressly forbidden to indorse. So a broker, employed to procure insurance, may adjust a loss under the same; but he cannot give up any advantages, rights, or securities of the assured, by compromise or otherwise, without special authority.

SECTION V.

LIABILITY OF AN AGENT.

GENERALLY, an agent makes himself liable by his express agreement, or by transcending his authority, or by a material departure from it, or by concealing his character as agent, or by such conduct as renders his principal irresponsible, or by his own bad faith. If he describes himself as agent for some unnamed principal, he is not liable, unless he is proved to be the real principal. If an agent execute an instrument the language of which would hold him personally, he cannot exonerate himself by showing that in fact he signed it as agent, and that this was known to the other party; because this would be to vary the terms of a writ-

ten contract by evidence, which is not permitted, as we have before stated.

A party with whom an agent deals as agent cannot hold him personally, on the ground that he transcended or departed from his authority, if that party knew at the time that the agent did so. If he exceeds his authority, he is liable on the whole contract, although a part of it is within his authority. One who, having no authority, acts as agent, is personally responsible. But if an agent transcends his authority through an ignorance of its limits which is actual and honest, and is not imputable to his own neglect of the means of knowledge, he would not be held, unless an innocent party dealing with him as agent would otherwise suffer loss.

SECTION VI.

RIGHTS OF ACTION GROWING OUT OF AGENCY.

If an agent intrusted with goods sell the same without authority, the principal may affirm the sale, and sue the buyer for the price, or he may disaffirm the sale, and recover the goods from the buyer.

In case of a simple contract, that is, a contract not under seal, an undisclosed principal may show that the nominal party was actually his agent, and thus make himself actually a party to the contract, and sue upon it; but if the other party has previously in good faith settled with the supposed agent, or paid him anything, in cash or by charge, or in account, this other party must not lose by the coming forward of the principal. So, too, an undisclosed principal, when discovered, may be made liable on such contract; but would be protected, if his accounts or relations with his agent had been in the meantime changed in good faith, so as to make it detrimental to him to be held liable. If one sells to an agent, knowing him to be an agent, and knowing who is his principal, and elects to charge the goods to the agent alone, he cannot afterwards transfer the charge to the principal.

Notice to an agent, before the transaction goes so far as to render the notice useless, is notice to the principal. And knowledge obtained by an agent in the course of the transaction itself is the same thing as knowledge of the principal. Notice to an officer or member of a corporation is notice to that corporation,

if the officer or member, by appointment, or by usage, had authority to receive it for the corporation; but notice to any member is not necessarily notice to a corporation.

SECTION VII.

HOW A PRINCIPAL IS AFFECTED BY THE ACTS OF HIS AGENT.

IF an agent makes a fraudulent representation, a principal will be liable for resulting injury, although personally ignorant and innocent of the wrong; nor can he take any benefit therefrom. A principal cannot, of course, restrict his liability by calling himself an agent, although this is sometimes attempted.

Payment to an agent of money due to the principal binds the principal only when it is made to the agent in the regular course of business. Payment to a sub-agent appointed by the agent, but whose appointment is not authorized by the principal, binds the agent, and renders him liable to the principal for any loss of the money in the sub-agent's hands. Where a legacy was left to a tradesman, and the executors paid it to a shopman who was in the habit of receiving daily payments, this was held not a sufficient payment to discharge the executors. And, generally, a shopman authorized to receive money at the counter, or any person authorized to receive money at any particular place or in any particular way, is not thereby authorized to receive it in any other place or in any other way. Nor is the principal bound, if the agent be authorized to receive the money, but, instead of actually receiving it, discharge a debt due from him to the payer, and then give a receipt as for money paid to his principal, unless it can be shown that he has special authority to receive payment in this way, or that such payment is justified by known usage.

In general, although a principal may be responsible for the deliberate fraud of his agent in the execution of his employment, he is not responsible for his *criminal* acts, unless he expressly commanded them. There is, however, a class of cases in which the principal has intrusted property to his agent, and the agent has used it illegally; and this act of the agent is evidence, which if unexplained and unanswered, suffices to render the principal liable criminally, without proof of his direct participation in the act itself. The smuggling of goods, the issue of libellous publi-

cations, and the sale of intoxicating liquors, by agents, belong to this class.

SECTION VIII.

MUTUAL RIGHTS AND DUTIES OF PRINCIPAL AND AGENT.

AN agent cannot depart from his instructions without making himself liable to his principal for the consequences. In determining the purport or extent of his instructions, custom and usage in like cases will often have great influence; because, on the one hand, the agent is entitled to all the advantages which a known and established usage would give him; and, on the other, the principal has a right to expect that his agent will conduct himself according to such usage. But usage is never permitted to prevail over express instructions. A principal who accepts the benefit of an act done by his agent beyond or aside from his instructions, discharges the agent from responsibility therefor. And any unnecessary delay in renouncing the transaction, or any endeavor to wait and make a profit out of it, is an acceptance of the act. But if the agent has bought goods for his principal without authority, the latter may renounce the purchase, and, nevertheless, hold the goods as security for his money, if that has been advanced on them.

In general, every agent is entitled to indemnity from his principal, when acting in obedience to his lawful orders, or when he, in conformity with his instructions, does an act which is not wrong in itself, and which he is induced by his principal to suppose right at that time.

An attorney or agent cannot appoint a sub-attorney or agent, unless authorized to do so expressly, or by a certain usage, or by the obvious reason and necessity of the case. Thus, a consignee or factor for the sale of merchandise may employ a broker to sell, when this is the usual course of business. A sub-agent, appointed without such authority, is only the agent of the agent, and not the agent of the principal; unless his appointment is in some way authorized or confirmed and ratified by the principal.

An agent is bound to use, in the affairs of his principal, all that care and skill which a reasonable man would use in his own. And he is also bound to the utmost good faith. Where, however, an agent acts gratuitously, without an agreement for com-

pensation, or any legal right to compensation growing out of his services, he will not be held responsible for other than gross negligence. A strictly gratuitous agent will be held responsible for property intrusted to him, if it be lost or injured by his gross negligence.

For any breach of duty, an agent is responsible for the whole injury thereby sustained by his principal; and, generally, a verdict against the principal for misconduct of the agent measures the claim of the principal over against the agent. The loss must be capable of being made certain and definite; and then the agent is responsible, if it could not have happened but for his misconduct, although not immediately caused by it. Thus, where an insurance-broker was directed to effect insurance on goods "from Gibraltar to Dublin," and caused the policy to be made, "beginning from the lading of the goods on board," and they were laden on board at Malaga, and went thence to Gibraltar, and sailed for Dublin, and were lost on the voyage, so that the policy did not cover them because they were not laden at Gibraltar, this was held to be gross negligence on his part, and he was held responsible for the value of the goods.

If any agent embezzles his employer's property, it is quite clear that the employer may reclaim it whenever and wherever he can distinctly trace and identify it. But if it be blended indistinguishably with the agent's own goods, and the agent die or become insolvent, the principal can claim only as a common creditor, as against other creditors: but as against the factor or agent himself, the whole belongs in law to the principal; because the factor or agent had no right thus to mix up the property of another with his own, and if he chooses to do so, he must lose all of his own property that cannot be separated from that which is not his own.

An agent employed to sell property cannot buy it himself; nor, if employed to buy, can he buy of himself; unless expressly authorized to do so. Nor can a trustee purchase the property he holds in trust for another. But the other party may ratify and confirm such sale or purchase by his agent; and he will do this by accepting the proceeds and delaying any objection for a long time after the wrongful act is made known to him. And if a trustee or agent to sell property buys it, not in his own name, but through somebody else, the sale is void.

Among the obvious duties of all agents is that of keeping an exact account of their doings, and particularly of all pecuniary transactions. After a reasonable time has elapsed, the court will presume that such an account was rendered, accepted, and settled. Otherwise, every agent might always remain liable to be called upon for such account. Moreover, he is liable not only for the balances in his hands, but for interest; or even, where there has been a long delay to his own profit, he might be liable for compound interest, on the same ground on which it has been charged in similar cases against executors, trustees, and guardians. No interest whatever would be charged, if such were the intention of the parties, or the effect of the bargain between them; and this intention may be inferred either from direct or circumstantial evidence,—as the nature of the transaction, or the fact that the principal knew that the money lay useless in the agent's hands, and made no objection or claim.

The general rule is, that a principal may revoke his agency, and an agent may throw up the agency, at pleasure. But neither would be permitted to exercise this power in an unfair and injurious manner which circumstances do not require or justify, without being responsible to the other party for any damages caused by his wrongful act.

Insanity revokes authority, especially if legally ascertained. But if the principal, when sane, gave an authority to his agent, and a third party acts with the agent in the belief of his authority, but after the insanity of the principal has revoked it, the insanity not being known to this third party, this revocation will not be permitted to take effect to the injury of this third party.

SECTION IX.

FACTORS AND BROKERS.

ALL agents who sell goods for their principals, and guarantee the price, are said in Europe to act under a *del credere commission*. In this country, this phrase is seldom used, nor is such guaranty usually given, except by commission-merchants. And where such guaranty is given, the factor is so far a surety, that his employers must first have recourse to the principal debtor. Still his promise is not "a promise to pay the debt of another,"

within the Statute of Frauds. Nor does he guarantee the safe arrival of the money received by him in payment of the goods, and transmitted to his employer, but he must use proper caution in sending it. And if it is agreed that he shall guarantee the remittance, and charge a commission for so doing, he is liable, although he does not charge the commission. If he takes a note from the purchaser, this note is his employer's; and if he takes depreciated or bad paper, he must make it good.

A broker or factor is bound to the care and skill properly belonging to the business which he undertakes, and is responsible for the want of it.

A factor intrusted with goods may pledge them for advances to his principal, or for advances to himself to the extent of his lien for charges and commissions. And his power to pledge them, which grows out of the law-merchant, has been much enlarged by statute in many of our States.

The mere wishes or intimations of his employer, if sufficiently distinct, have the force of instructions. Thus, in New York, a principal wrote to his factor, stating that he thought there was a short supply of the goods he had consigned, and giving facts on which his opinion was founded, and concluded, "I have thought it best for you to take my pork out of the market for the present, as thirty days will make an important change in the value of the article." This was considered by the court to be a distinct instruction, binding upon the factor; and he was therefore held liable for the loss caused by selling the pork within the thirty days.

All instructions the agent or factor must obey; but may still, as we have already stated, depart from their letter, if in good faith, and for the certain benefit of his employer, in an unforeseen exigency. Having possession of the goods, he may insure them; but is not bound to do so, nor even to advise insurance, unless requested, or unless a distinct usage makes this his duty. He has much discretion as to the time, terms, and manner of a sale, but must use this discretion in good faith; for a sale which is precipitated by him without reason and injuriously is void, as unauthorized. If he send goods to his principal without order, or contrary to his duty, the principal may return them, or, acting in good faith and for the benefit of the factor, may sell them as the factor's goods.

Although a factor charges no guaranty commission, he is liable to his principal for his own default; so he is if he sells on credit, and, when it expires, takes a note to himself; but if he takes at the time of the sale a negotiable note from a party in fair credit, and the note is afterward dishonored, this is the loss of his employer, unless the factor has guaranteed it.

If he sells the goods of many owners to one purchaser, taking a note for the whole to himself, and gets it discounted for his own use or accommodation, he is then liable without any guaranty for the payment of that note. So he is if he gets discounted for his own use a note taken wholly for his principal's goods. But he may discount the note to reimburse himself for advances, without making himself liable. If he sends his own note for the price to his employer, he must pay it.

As a factor has possession of the goods, he may use his own name in all his transactions, even in suits at law; but a broker can buy, sell, receipt, &c., only in the name of his employer. So, a factor has a lien on the goods in his hands for his advances, his expenses, and his commissions, and for the balance of his general account. And the factor may sell from time to time enough to cover his advances, unless there be something in his employment or in his instructions from which it may be inferred that he had agreed not to do so. But a broker, having no possession, has no lien. The broker may act for both parties, with the knowledge and consent of both, but not otherwise, and often does so. But, from the nature of his employment, a factor should act only for the party employing him.

A broker has no authority to receive payment for the goods he sells, unless that authority be given him, expressly or by usage. Nor will payment to a factor discharge a debtor who has received notice from the principal not to make such payment.

Generally, neither factor nor broker can claim their commissions until their whole service be performed, and in good faith, and with proper skill, care, and industry; and their negligence may be given in evidence either to lessen their compensation or commission, or to bar them altogether. But if the service begins, and is interrupted wholly without their fault, they may claim a proportionate compensation. If either bargain to give his whole time to his employer, he will not be permitted to derive any compensation for services rendered to other persons. Nor can

either have any valid claim against any one for illegal services, or those which violate morality or public policy.

A broker is entitled to his commission when he produces a customer able, ready and willing to purchase; and it is immaterial whether his principal carries out the contract or not.

A principal cannot revoke an authority given to a factor, after advances made by the factor, without repaying or securing the factor.

The distinction between a *foreign* and a *domestic* factor is quite important, as they have quite different rights, duties, and powers, by the law-merchant generally. A domestic factor is one who is employed and acts in the same country with his principal. A foreign factor is one employed by a principal who lives in a different country; and a foreign factor is as to third parties—for most purposes and under most circumstances—a principal. Thus, they cannot sue the principal, because they are supposed to contract with the factor alone, and on his credit, although the principal may sue them; and a foreign factor is personally liable, although he fully disclose his agency, and his principal is known.

The following forms of powers of attorney are those most frequently required; and from them, by suitable alterations, powers of attorney may be framed for any purpose:

(81.)

Power of Attorney.

Know all Men by these Presents, That I _____ (*the name of the principal or party appointing*) of _____ (*residence*) _____ have constituted, ordained, and made, and in my stead and place put, and by these presents do constitute, ordain, and make, and in my stead and place put (*name of attorney*) to be my true, sufficient, and lawful attorney for me and in my name and stead to (*here set forth the purposes for which the power is given*) _____ Giving and hereby granting unto him, the said attorney, full power and authority in and about the premises; and to use all due means, course, and process in law, for the full, effectual, and complete execution of the business afore described; and in my name to make and execute due acquittance and discharge; and for the premises to appear, and the person of me the constituent to represent, before any governor, judges, justices, officers, and ministers of the law whatsoever, in any court or courts of judicature, and there on my behalf, to answer, defend, and reply unto all actions, causes, matters, and things whatsoever relating to the premises. Also to submit any matter in dispute, respecting the premises, to arbitration or otherwise; with full power to make and substitute, for the purposes

aforesaid, one or more attorneys, under him, my said attorney, and the same again at pleasure to revoke. And generally to say, do, act, transact, determine, accomplish, and finish all matters and things whatsoever relating to the premises, as fully, amply and effectually, to all intents and purposes, as I, the said constituent, if present, ought or might personally, although the matter should require more special authority than is herein comprised, I, the said constituent ratifying, allowing, and holding firm and valid all whatsoever my said attorney or his substitutes shall lawfully do, or cause to be done, in and about the premises, by virtue of these presents.

In Witness Whereof, I have hereunto set my hand and seal this _____ day of _____ in the year of our Lord nineteen hundred and _____

(Signature.) (Seals.)

Signed, Sealed, and Delivered in the Presence of us

Sometimes a power of attorney is given without any power of substitution. This may be by inadvertence, or because it was not intended that the attorney should substitute anybody in his place. Afterwards, if it is desired to give him this power to substitute others, this may be done by a separate instrument.

(82.)

Power to Appoint Substitute Attorney.

Know all Men by these Presents, That, whereas I _____ have heretofore by a letter of attorney, dated _____, a copy of which is hereto annexed, appointed _____ of _____, as my true and lawful attorney, for the purposes and with the powers therein set forth, but without giving to my said attorney power to substitute any attorney under him. I now authorize and empower him, my said attorney, to substitute and appoint one or more attorneys under him, my said attorney, for the purposes and with the powers set forth in said letter, and the same at pleasure to revoke.

Hereby ratifying and confirming all that my said attorney or his substitutes may do in the premises by virtue of said letter of attorney and of these presents.

In Witness Whereof, etc.

(83.)

Appointment of Substitute.

Know all Men by these Presents, That I _____ by virtue of the power and authority to me given, in and by the letter of attorney of _____ (*the principal*) which is hereunto annexed (*or described without being annexed*), do make, substitute and appoint _____ (*name of substitute*) as well for me as the true and lawful attorney and substitute of the said constituent named in the said letter of attorney, to do, execute, and perform all and everything requisite and necessary to be done, as fully, to all intents and purposes, as the said constituent or I myself could do if personally present;

hereby ratifying and confirming all that the said attorney and substitute hereby made shall do in the premises by virtue hereof and of the said letter of attorney.

In Witness Whereof, etc.

(84.)

Power of Attorney in a Shorter Form.

Know all Men by these Presents, That I _____ (*name of principal*) have made, constituted and appointed, and by these presents do make, constitute and appoint _____ (*name of attorney*) my true and lawful attorney for me and in my name, place and stead to _____ (*here describe the thing to be done*) _____ giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitutes shall lawfully do or cause to be done by virtue hereof.

In Witness Whereof, etc.

(85.)

General Power of Attorney.

Know all Men by these Presents, That I _____ of _____, do hereby make, constitute and appoint _____ of _____, my true and lawful attorney, with full power of substitution, for me and in my name and stead, to do any and all acts, and transact any and all business of every kind and nature relating to my property and affairs of every description, as fully and effectually as I could do if personally present, and in my name to execute, acknowledge and deliver, and to seal with my seal, all written instruments which may be necessary or proper for the full and perfect transaction of such business; hereby ratifying and confirming all that my said attorney or his substitutes may lawfully do under and by virtue of these presents.

In Witness Whereof, etc.

If the attorney is to be authorized to convey real estate, this should be expressly stated, and the powers given him should be fully and specifically set forth. The instrument must also be acknowledged and recorded in the same manner as a deed. The following clause—with such alterations as the special powers to be granted may require—will serve as a model:

“Also giving to my said attorney full power to manage, lease, mortgage, sell, or exchange any and all real estate, wherever situated, which I now own or may hereafter own, for such consideration and on such terms as he may see fit, and to execute, acknowledge and deliver in my name, and seal with my

seal, any and all deeds, leases, mortgages and other written instruments which may at any time be necessary or proper to carry into effect the powers hereinbefore granted.''

(86.)

Full Power of Attorney to Demand and Recover Debts.

Know all Men by these Presents, That I _____ (*name of principal*) have constituted, ordained and made, and in my stead and place put, and by these presents do constitute, ordain, and make, and in my stead and place put _____ (*name of attorney*) to be my true, sufficient and lawful attorney for me and in my name and stead, and to my use, to ask, demand, levy, require, recover and receive of and from all and every person or persons whomsoever the same shall or may concern, all and singular sum and sums of money, debts, goods, wares, merchandise, effects and things, whatsoever and wheresoever they shall and may be found due, owing, payable, belonging and coming unto me the constituent, by any ways and means whatsoever.

Giving and hereby Granting unto my said attorney full and whole strength, power and authority in and about the premises; and to take and use all due means, course and process in the law, for the obtaining and recovering the same; and of recoveries and receipts thereof, and in my name to make, seal and execute due acquittance and discharge; and for the premises to appear, and the person of me the constituent to represent, before any governor, judges, justices, officers and ministers of the law whatsoever, in any court or courts of judicature, and there, on my behalf, to answer, defend and rely upon all actions, causes, matters and things whatsoever, relating to the premises. Also to submit any matter in dispute to arbitration or otherwise, with full power to make and substitute one or more attorneys under my said attorney, and the same again at pleasure to revoke. And generally to say, do, act, transact, determine, accomplish and finish all matters and things whatsoever, relating to the premises, as fully, amply, and effectually, to all intents and purposes, as I the said constituent if present, ought or might personally, although the matter should require more special authority than is herein comprised, I the said constituent ratifying, allowing and holding firm and valid, all and whatsoever my said attorney or his substitutes shall lawfully do, or cause to be done, in and about the premises, by virtue of these presents.

In Witness, etc.

(87.)

Power of Attorney to Sell Lands.

Know all Men by these Presents, That I, the undersigned _____ (*name of the selling party*) of the town (*or city*) of _____, County of _____, and State of _____, have this day made, constituted, and appointed, and do by these presents make, constitute, and appoint _____ (*name of attorney*) of the town (*or city*) of _____, in the County of _____, and State of _____, my true and lawful attorney, for me and in my name to sell and dispose of, absolutely, in fee-simple, the following described lot,

tract, or parcel of land, or any part thereof, situate, lying, and being in the County of _____ and State aforesaid, to wit (*here describe the land or premises granted*) for such price or sum of money, and to such person or persons as he, shall think fit and convenient; and also for me and in my name, and as my act and deed, to sign, seal, execute, acknowledge, and deliver such deed or deeds, and conveyance or conveyances, for the absolute sale and disposal thereof, or of any part thereof, with such clause or clauses, covenant or covenants, and agreement or agreements, to be therein contained, as my said attorney shall think fit and expedient; hereby ratifying and confirming all such deeds, conveyances, bargains, and sales which shall at any time hereafter be made by said attorney touching or concerning the premises.

In Testimony Whereof, I have hereunto set my hand and seal, on this _____ day of _____, A. D. 19____

(Signatures.) (Seals.)

(88.)

Power of Attorney to Sell and Deliver Chattels.

Know all Men by these Presents, That I, the undersigned, for value received, do hereby make, constitute, and appoint _____ to be my true and lawful attorney, for me and in my name and behalf, to sell, transfer, and deliver unto _____ or any other person or persons: (*here describe the things to be sold*) _____

And further, one or more persons under him to substitute with like power.
In Witness, etc.

(89.)

Power of Attorney Given by Seller to Buyer.

Know all Men by these Presents, That I _____ for value received, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer, unto _____ (*name of the buyer*) the following articles, namely, _____ (*describe the articles*) and I do hereby constitute and appoint the said _____ (*the buyer*) my true and lawful attorney irrevocable, for me and in my name and stead, but to his use, to sell, assign, transfer, and set over all or any part of the said _____ (*the goods*) and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that my said attorney or his substitute or substitutes shall lawfully do by virtue hereof.

In Witness, etc.

(90.)

Power of Attorney to Sell Shares of Stock, with Appointment by Attorney of Substitute.

Know all Men by these Presents, That, for value received, I (*name of the principal*) of _____ do hereby make, constitute, and appoint irrevocably, _____ my true and lawful attorney (with power of substitution), for and

in my name and on my behalf, to sell, assign, and transfer unto _____
(*name of buyer*) _____ shares now standing in my name in the capital
(or joint) stock of the _____. And my said attorney is hereby fully
empowered to make and pass all necessary acts for the said assignment and
transfer.

In Witness, etc.

For value received, I appoint, irrevocably, (*name of the substitute*) as my
substitute, with all the powers above given to me.

In Witness, etc.

(91.)

Power of Attorney to Subscribe for Stock.

Know all Men by these Presents, That I, the undersigned, do hereby
irrevocably constitute and appoint _____ to be my true and lawful at-
torney, for me and in my name and behalf to subscribe for _____ shares
in the capital stock of the _____. And further, one or more persons under
him to substitute with like power.

In Witness, etc.

(92.)

Proxy, or Power of Attorney to Vote.

Know all Men by these Presents, That I _____ (*name of the principal*)
of _____ do hereby appoint _____ to be my substitute and proxy for me,
and in my name and behalf to vote at any election of directors or other
officers, and at any meeting of the stockholders of the _____, as fully as I
might or could were I personally present.

In Witness, etc.

(93.)

Proxy, Revoking All Previous Proxies.

Know all Men by these Presents, That I, the undersigned, stockholder
in the _____ (*name of the company*) do hereby appoint _____ my true
and lawful attorney, with power of substitution, for me and in my name
to vote at the meeting of the stockholders in said company, to be held at
_____ or at any adjournment thereof, with all the powers I should possess
if personally present, hereby revoking all previous proxies.

_____ 19____

Witness,

(*Signature.*)

(94.)

Proxy, with Affidavit of Ownership, in Use in New York.

Know all Men by these Presents, That I, _____ do hereby constitute
and appoint _____ my attorney and agent for me and in my name, place,
and stead, to vote as my proxy at any election of directors of the _____
according to the number of votes I should be entitled to vote if then per-
sonally present.

In Witness, etc.

I do swear (*or affirm*) that the shares on which my attorney and agent in the above proxy is authorized to vote, do not belong, and are not hypothecated to the said company, and that they are not hypothecated or pledged to any other corporation or person whatever; that such shares have not been transferred to me for the purpose of enabling me to vote thereon at the ensuing election, and that I have not contracted to sell or transfer them upon any condition, agreement, or understanding, in relation to my manner of voting at the said election.

Sworn to this _____ day of _____ 19____, before me,
 _____ — (*Signature*.)

(95.)

Power to Receive Dividend.

Know all Men by these Presents, That I, _____ of _____, do authorize, constitute, and appoint _____ to receive from the _____ (*name of the company*) the dividend now due to me on all stock standing to my name on the books of the said company, and receipt for the same; hereby ratifying and confirming all that may lawfully be done in the premises by virtue hereof.

In Witness, etc.

CHAPTER XVII.

PARTNERSHIP.

SECTION I.

WHAT A PARTNERSHIP IS.

WHEN two or more persons combine their property, labor, or skill, for the transaction of business for their common profit, they enter into partnership. Sometimes the word "firm" is used as synonymous with partnership; sometimes, however, it means only the copartnership name.

A single joint transaction, out of which, considered by itself, neither profit nor loss arises, will not create a partnership. If a joint purchase be made, and each party then takes his distinct and several share of the goods, this is no partnership.

Any persons competent to transact business on their own account may enter into partnership for that purpose, and no others.

SECTION II.

HOW A PARTNERSHIP MAY BE FORMED.

No especial form or manner is necessary. It may be by oral agreement, or by a written agreement, which may have a seal or not. But the liability and authority of the partners begin with the *actual* formation of the partnership, and do not wait for the execution of any articles. In general, if there be an agreement to enter into business, or into some particular transaction, together, and share the profits and losses, this constitutes a partnership, which is just as extensive as the business proposed to be done, and not more so. The parties may agree to share the profits in what proportion they choose; but in the absence of any agreement, the law presumes equal shares.

They may agree as to any way of dividing the losses, or even that one or more partners alone shall sustain them all, without loss to the rest. And this agreement is valid as between themselves; but it will not protect those partners who were to sustain no loss from responsibility to third parties, unless the third parties knew of this agreement between the partners, and gave credit accordingly. If A, B, & C, being partners, agree that A should not lose anything by their business, and a person knowing this bargain dealt with the firm on the credit of B & C, he could not call on A. But an agreement exempting partners from loss generally, or from loss beyond the amount invested, will only operate between the partners, unless it can be shown that the third party not only knew the agreement, but contracted with the firm on the basis of this agreement. And, generally, stipulations in articles of copartnership limiting the power of a partner are not binding on third parties who are ignorant of them. Each partner is absolutely responsible to every creditor of the copartnership for the whole amount of the debt; and if thereby obliged to suffer loss, his only remedy is against the other partners.

Although partners may agree and provide as they will in their articles, a long neglect of these provisions will be regarded as a mutual waiver of them.

Persons may be liable as partners to third parties or strangers, who are not partners as between themselves. Whether they are partners as to each other would generally be determined by the

intention of the parties, as drawn from their contract,—whether oral or written,—under the ordinary rules of evidence and construction. But whether one is liable as a partner to one who deals with the firm must depend in part upon his intention, but more upon his acts; for if by them he justifies those who deal with the firm in thinking him a partner in that business, he must bear the responsibility; as if he declares that he has a joint interest in the property, or conducts the business of the firm as a partner, accepting bills, or suffers his name to be used upon cards, or in advertisements, or on signs, or in any similar manner. The declarations or acts of one person cannot, however, make another person liable as partner, without co-operation or consent, by word or act, on his part. The rule is this; that one who thus holds himself out as a partner, when he really is not one, is responsible to a creditor who on these grounds believed him to be a partner; but not to one who knew nothing of the facts, or who, knowing them, knew also that this person was not a partner.

A *secret* partner is one who is actually a partner by participation of profit, but is not avowed or known to be such; and a *dormant* partner is one who takes no share in the conduct or control of the business of the firm. Both of these are liable to creditors (even if the creditors did not know them to be members of the firm), on the ground of their interest and participation in the profits, which constitute, with the property of the firm, the funds to which creditors may look for payment. A *nominal* partner is one who holds himself out to the world as such, but is not so in fact. He is liable to creditors of the firm, on the ground that he justifies them in trusting the firm on his credit, and, indeed, invites them to do so by declaring himself to be a partner.

The principal test of membership in a mercantile firm is said to be the participation in the profits. Thus, if one lend money to be used in a business, for which he is to receive a share in the profits, this would make him a partner; and if he is to receive lawful interest, and, in addition thereto, a share of the profits, this would generally make him liable as a partner to a creditor of the firm.

Sometimes a clerk or salesman, or a person otherwise employed for the firm, receives a share of the profits, instead of wages. Formerly it was held, that if such person received any certain share, say "one-tenth part of the net annual profits," this made

him liable as a partner; but if he received "a salary equal in amount to one-tenth of the net profits," this did not make him a partner. Now, the courts would look more at the actual intention of the parties, and their actual ownership of an interest in the funds of the partnership, and not be governed by the mere phraseology used. If in fact he works for wages, although these wages are measured by the profits, he is no partner, and therefore not liable for the debts, as every partner is.

Hence, factors and brokers for a commission on the profits, masters of vessels who engage for a share of the profits, or seamen employed in whale-ships, are none of them partners.

A partnership usually has but one business name; but there does not seem to be any legal objection to the use of two names, especially for distinct business transactions; as A B & Co. for general business, and the name of A C & Co. for the purpose of making or indorsing negotiable paper.

SECTION III.

HOW A PARTNERSHIP MAY BE DISSOLVED.

If the articles between the partners do not contain any agreement that the partnership shall continue for a specified time, it may be dissolved at the pleasure of either partner. But no partner can exercise this power wantonly and injuriously to the other partners, without making himself responsible for the damage he thus causes. If there be a provision that the partnership shall continue a certain time, this is binding.

If either partner were to undertake to assign his interest, for the purpose of withdrawing from the firm, against the will of the partners, without good reason, and in fraud of his express agreement, a court of equity would interfere and prevent him. For the assignment of a partner's interest, or of his share of the profits, operates at once a dissolution of the partnership.

Such assignment may transfer to the assignee the whole interest of the assignor, but cannot give him a right to become a member of the firm. There seems to be an exception to this rule where the partnership is very numerous, and the manner of holding shares, by scrip or otherwise, indicates the original intention of making the shares transferable. Such a partnership is in effect

a joint-stock company; which form of association is not usual here, because incorporation is better, and is easily obtained.

Death of a general or even of a special partner operates a dissolution; and the personal representatives of the deceased do not take his place, unless there be in the articles an express provision that they shall. And such provisions are construed as giving the heirs or personal representatives the right of electing whether to become partners or not. If either party is unable to do his duty to the partnership, as by reason of insanity or a long imprisonment, or if he be guilty of material wrong-doing to the firm, a court of equity will decree a dissolution. And if the original agreement were tainted with fraud, the court will declare it void, from its beginning.

Whenever a court of equity decrees a dissolution of the partnership, it will also decree that an account be taken between the partners, if requested by either partner. And if necessary to do justice, it will decree a sale of the effects and a distribution of the proceeds, after a consideration of all the facts of the case and the whole condition of the firm. Such a decree will be made if a partner die or become bankrupt.

If the whole interest of a copartner is levied upon and sold on execution, this makes a dissolution, and the purchaser becomes,—like every other assignee of a partner,—not a partner, but only a tenant in common (that is, a joint owner) with the other partners; but if the levy and sale are only of a part, which may be severed from the rest, this may not operate a dissolution except as to that part.

If one partner retires, this operates in law a dissolution, and the remaining partners constitute in law a new firm, although in fact the old firm frequently continues and goes on with its business, with or without new members, as if it were the same firm.

The partner retiring should withdraw his name from the firm, and give notice, by the usual public advertisement, of his retirement, and also, by personal notice, by letter or otherwise, to all who usually do business with the firm; and after such notice he is not responsible, even if his name be retained in the firm by the other partners, if this is done without his consent. Nor is he responsible to any one who has in any way actual knowledge of his retirement.

A dormant or secret partner is not liable for a debt contracted after his retirement, although he give no notice, because his liability does not rest upon his giving his credit to the firm, but upon his being actually a partner.

SECTION IV.

THE PROPERTY OF THE PARTNERSHIP.

A PARTNERSHIP may hold real estate as well as personal estate, and a partnership may be formed to trade in land, or to cultivate land. But the rules of law in respect to real estate, as in relation to title, conveyance, dower, inheritance, and the like, make some difference. As far, however, as is compatible with these rules, it seems to be agreed that the real estate of the partnership is treated as if it were personal property, if it have been purchased with the partnership funds and for partnership purposes.

There is some difficulty in explaining this matter to those who are not acquainted with the peculiar law of real estate. Thus, no sale of land is valid except by deed, recorded; and only one who is thus a grantee under seal by record has a *legal* title. But a court of equity acknowledges and protects an *equitable* title in those who really possess all the interest in the land, as partners do who have paid for it, though it stands in the name of one partner only. But courts of equity cannot disregard the laws of conveyance and record, and therefore they say that this partner is the only *legal owner*, but that he owns the land as *trustee* for the firm. And then they compel him to sell it, or otherwise dispose of it, as the interests of the firm or of their creditors require.

So land thus purchased does not go to the heirs of the partner or partners in whose name it may stand, but is first subject to the debts of the firm, and then to the balance which may be due to either partner on winding up their affairs. But when these debts and claims are adjusted, any surplus of the real estate will then descend as real estate, and not as personal estate.

Improvements made with partnership funds on the real estate of a partner will be regarded as partnership property.

The widow has her dower only after the above-mentioned debts and claims are adjusted. And while the legal title is protected, as it must be for the purpose of conveyance and other similar

purposes, the person holding this legal title will be held as a trustee for the partnership if the partnership be entitled to the beneficiary interest.

But a purchaser of partnership real property, without notice or knowledge, from a partner holding the same by legal title, is protected against the other partners. If, however, the purchaser has such knowledge, the conveyance may be avoided as fraudulent, or he may be held as trustee, the land being in his hands chargeable with the debts and claims of the partnership.

SECTION V.

THE AUTHORITY OF EACH PARTNER, AND THE JOINT LIABILITY OF THE PARTNERSHIP.

THIS authority is very great, because the law-merchant makes each partner an agent of the whole partnership, with full power to bind all its members and all its property, in transactions which fall within the usual business of the firm; as loans, borrowing, sales—even of the whole stock, pledges, mortgages, or assignments; and this last extends even to an honest and prudent assignment of the whole stock and personal property to trustees to pay partnership debts. It extends to the making or indorsing negotiable paper, and to transactions out of the usual business of the firm, if they arose from and were fairly connected with that business.

Nor is any party dealing with a partner affected by his want of good faith towards the partnership, unless he colluded with the partner, and participated in his want of good faith, by fraud or gross negligence. But a holder of a note or bill signed or indorsed by a partner without authority, has no claim against the partnership, if he knew or should have known the want of authority.

A partner cannot, in general, bind the firm by a guaranty, a letter of credit, or a submission to arbitration, without authority, because these things do not belong generally and properly to commercial business. But anything so done by a partner may be adopted and ratified by the partnership, and then it has the same force as if originally authorized. And this ratification may be formal and express, or consist only of acts which distinctly

imply it; such as assenting to and acting with reference to it; and especially receiving and holding the beneficial results of it; as, for example, taking and holding money paid for it.

By the earlier and more stringent rules of law, a partner could not bind his copartners by an instrument under seal unless he was himself authorized under seal; and their subsequent acknowledgment of his authority did not cure the defect. Now, however, it is generally held that a partner may bind his firm by an instrument under seal, if it be in the name and for the use of the firm, and in the transaction of their usual business, provided the other copartners consent thereto before execution, or adopt and ratify the same afterwards: and they may assent or ratify by word as well as by seal; or provided he could have made the same conveyance, or done the same act effectually without a deed. And a deed executed by one partner in the presence and with the assent of the other partners, will bind them. A sealed instrument executed in the name of the firm by one partner, and not binding on the firm, may in most of the States be enforced against the partner who executed it.

A partnership has no seal at law, and can have none; only a person or a corporation can have a seal. Instruments are sometimes executed "A. B. & Co.," and a seal is affixed to the name. This is, strictly speaking, no seal at all; and if the instrument needs a seal to make it valid, as if it were a deed of land, it would, at law, be wholly void. But the courts in some of our States are somewhat lax on this subject, and might construe it as the seal of each one of the partners to give the instrument validity.

A majority of the members cannot conclusively bind the minority, unless in reference to the internal concerns of the firm; as, for example, the salary or appointment of a clerk, the hiring or fitting-up of a counting-room, the manner of keeping accounts, and the like. But one member may, so far as he is concerned, arrest a negotiation which was only begun, and prevent a bargain which would be binding on him, by giving notice to the third party of his dissent and refusal in season to enable him to decline the bargain without detriment.

Partners must act *as such*, to bind each other. Thus, if a partner makes a note, and signs it with his own name and his partner's name, as a joint and several note, it does not bind his partner, for he had no authority to make such a note.

If the name of one partner be also the name of the firm,—for John Smith and Henry Robinson may do business as partners under the name of “John Smith,”—this name is not necessarily the name of the firm when used in a note or contract; and if the partner whose name is used carries on mercantile business for himself, it will not be supposed to be used as the name of the firm without sufficient proof.

Persons may give a joint order for goods without becoming jointly liable, if it appear otherwise that credit was given to them severally. Nor will one have either the authority or the obligation of a partner cast upon him by an agreement of the firm to be governed by his advice. Nor will one be charged as partner with others unless he has incurred the liability by his own voluntary act.

The reception of a new member constitutes, in law, a new firm; but the new firm may recognize the old debts, as by express agreement, or paying interest, or other evidence of adoption, and then the new firm is jointly liable for the old debt. But there must be some fact from which the assent of the new member to this adoption of the old debt may be inferred, for his liability is not to be presumed.

A notice in legal proceedings, abandonment to insurers by one who was insured for himself and others, a notice to quit of one of joint lessors or lessees who are partners in trade, notice to one partner of the dishonor of a note or bill bearing the name of the firm, release to one partner, or by one partner,—will bind all the partners, and render them jointly liable. But a service of legal process should be made upon each partner personally.

If money be lent to a partner for partnership purposes, it creates a partnership debt; but not if lent expressly on the individual credit of the person borrowing; and not if the borrowing partner receives it to enable him to pay his contribution to the capital of the firm. Though the money be not used for the firm, if it was borrowed by one partner on the credit of the firm, in a manner and under circumstances justifying the lender in trusting to that credit, it creates a partnership debt. And if a partner uses funds in his hands as trustee, for partnership purposes, the firm are certainly jointly bound, if it was done with their knowledge. And if it was done without their knowledge, and the part-

ners are distinctly and directly benefited by the transaction, they will be deemed to have authorized it.

If in any case a person, knowing the existence of the firm, gave credit to a single partner only, then he can look only to that partner, and not to the firm, although the money was applied to, and used for, partnership purposes. But if the partner held himself out as borrowing for the firm, and the lender without any want of due care gave credit to the firm, and the transaction was a fair business transaction on the part of the lender, the firm will be liable, although the money is fraudulently appropriated by the partner to his own use.

In the absence of evidence showing to whom the credit was given, the fact that money lent to one partner was applied to the use of the firm will make the firm liable for the payment; but not if the partner employed it as his contribution to increase the capital of the firm.

If the purchaser of goods or the borrower of money have a dormant and secret partner, and the goods were bought or the money borrowed for partnership purposes, the seller or lender may look to both partners for payment, unless the seller or lender, knowing all the partners, gave credit to one only.

The firm is liable only to one who deals with a partner in good faith. Thus, if one receives negotiable paper bearing the name of a firm, knowing that it is not in the business of the firm, and is given for no consideration, received by the firm, he cannot hold the firm. And if a creditor of one partner receive for his separate debt a partnership security, this would be a fraud, unless the partner had, or was supposed by the creditor to have, the authority of the rest.

If he supposed the partner had this authority, he cannot hold the partnership if the partner had not the authority, unless the partnership had caused him to believe it. And if the partnership security be transferred for two considerations, one of which is private and fraudulent, and the other is joint and honest, the partnership is bound for so much of it as is not tainted with fraud, and only for that.

The partnership may be liable for injury caused by the criminal or wrongful acts of a partner, if these were done in the transaction of partnership business, and if it was the partnership which gave to the wrong-doer the means and opportunity of doing

the wrong. But an illegal contract will not bind the copartners, for the parties entering into it must be presumed to know its illegality; and the law enforces no bargain that is contrary to law.

The acknowledgment of one who had been a partner, after the dissolution of the partnership, may take the debt out of the statute of limitations as to him, but not so as to restore the liability of all the partners without their assent.

SECTION VI.

REMEDIES OF PARTNERS AGAINST EACH OTHER.

It is seldom that a partner can have a claim against another partner, *as such*, which can be examined and adjusted without an investigation into the accounts of the partnership, and, perhaps, a settlement of them. Courts of law have ordinarily no adequate means of doing this; and therefore it is generally true that no partner can sue a copartner at law for any claim growing out of a partnership transaction and involving partnership interests. But the objection to a suit at law between partners goes no further than the reason of it; and, therefore, one may sue his copartner upon his agreement to do any act which is not so far a partnership matter as to involve the partnership accounts.

If the accounts are finally adjusted, either partner may sue for a balance; and so it would be if the accounts generally remained open, but a specific part of them were severed from the rest, and a balance found on that. The rule is generally laid down, that an action cannot be sustained by a partner against a partner for a balance, unless there is an express promise to pay it. But such promise would be inferred in all cases in which an account had been taken, and a balance admitted to be due.

In general, an action of law between partners can be maintained, only when a rendering of judgment in this action will completely terminate all partnership matters, so that no further cause of action can grow out of them.

What a court of law cannot do as to actions between partners, a court of equity can; and, generally, a court of equity has a full jurisdiction over all disputes and claims between partners, and

may do whatever is necessary to settle them in conformity with justice.

A partner may sue his copartner for money advanced before the partnership was formed, although the loan was made to promote the partnership. And for work done for the firm before he became a member of it, he may sue those who were members when he did the work. And he may sue a copartner on his note or bill, although the consideration was on partnership account; but, in general, no action at law can be maintained for work and labor performed, or money expended for the partnership.

A partner who pays more than his proportion of a debt of the partnership cannot demand specific contribution from his copartners, but must charge his payment to the firm. The reason is, that they may have claims against him on other accounts, and they must be all settled together to strike the balance.

If one of a firm be a member also of another firm, the one firm cannot sue the other; for the same person cannot be plaintiff and defendant of record. A cannot sue A; and therefore A, B, & C cannot sue C, D, & E. In all these cases an adequate remedy may be found in a court of equity.

If a firm have a negotiable note which it cannot sue, because one of its own firm is liable upon it and must be made defendant, it can indorse the note over, and the indorsee may sue it in his own name, as we have before stated.

The partners are entitled to perfect good faith from each copartner; and a court of equity will interfere to enforce this. No partner will be permitted to treat privately, and for his own benefit alone, for a renewal of a lease, or to transfer to himself any benefit of interest properly belonging to the firm. And so careful is a court of equity in this respect, that it will not permit a copartner by his private contract or arrangement, to subject himself to a bias or interest which might be injurious to the firm, and conflict with his duty to them, but will declare void any contract of this kind.

SECTION VII.

RIGHTS OF THE FIRM AGAINST THIRD PARTIES.

If a partner sells the goods of the firm in his own name, the firm may sue for the price. But the rights of one who deals in

good faith with a copartner, as with him alone, are so far regarded, that he may set off any claim, or make use of any other defenses against the suit of the firm, which he could have made had the person with whom he dealt sued alone.

Therefore, if A honestly bought goods of a firm from a partner whom he supposed to be sole owner of them, and paid him the price, the firm cannot recover this price from the buyer, although the seller sold the goods fraudulently, and cheated the firm out of the money, but must charge the price to the selling partner.

A guaranty to a copartner, if for the use and benefit of the firm, gives to them a right of action.

A new firm, created by some change in the membership of an old firm, is entitled to the benefit of a guaranty given to the old firm, even if sealed, provided it shall distinctly appear that the instrument was intended to have that effect, and extend to the new firm.

SECTION VIII.

RIGHTS OF CREDITORS IN RESPECT TO FUNDS.

THE property of a partnership is bound to pay the partnership debts; and, therefore, a creditor of one copartner has no claim to the partnership funds until the partnership debts are paid. If there be then a surplus, he may have that copartner's interest therein, in payment of his private debt.

If a private creditor attaches partnership property, or in any way seeks to appropriate it to his private debt, the partnership debts being unpaid, he cannot hold it, either at law or in equity. Such attachment or appropriation is wholly subject to the paramount claims of the partnership creditors, and is wholly defeated by the insolvency of the partnership, although the partnership creditors have not brought any actions for their debts.

Hence, if a creditor of A attaches his interest in the property of A, B & Co., and a creditor of A, B & Co., attaches the same property, the first attachment is postponed to the second; that is, it has no effect until the debt of the second creditor is fully satisfied, and then it is good for the surplus of property. If, however, one partner is dormant and unknown, the creditor of the other attaching the stock is not postponed to the creditor

who discovers the dormant partner and sues him with the others, unless the first attaching creditor's claim has no reference to the partnership business, and that of the second attaching creditor has such reference.

In courts of equity the partnership creditors are restrained from appropriating the private property of the copartners until the claims of their private creditors are satisfied. And some recent adjudications indicate that the rule will become established at law.

I think the law ought to be, and that it is now tending to become, this. A partnership is a kind of body by itself, somewhat like a corporation. It has its own funds, and its own debts. The individual members may also have each his own funds and his own debts. The funds of the partnership should first be applied to the debts of the partnership; and, if there be any surplus, the members have it, and their creditors get it. So the private funds of each member should first be applied exclusively to the payment of that person's private debts; and, when they are wholly paid, the surplus should go to the partnership creditors, because each partner is responsible for the partnership debts. This rule prevails on the continent of Europe very generally. It is also embodied in the bankruptcy laws of the United States, and in the insolvency laws of most of the States.

It is now quite certain that the levy of a private creditor of one copartner upon partnership property can give him only what that copartner has; that is, not a separate personal possession of any part or share of the stock or property, but an undivided right or interest in the whole, subject to the payment of debts and the settlement of accounts; including also the right to demand an account.

As to how such levy and sale of the interest of one copartner shall be made by the sheriff, there is much diversity both of practice and authority. Upon principle, we think the sheriff can neither seize, nor transfer by sale, either the whole stock or any specific portion of it. He should, we think, without any *actual seizure*, sell all the interest of the defendant partner in the stock and property of the partnership; much in the same way in which he would sell his right to redeem a mortgage, or any other incorporeal right, subject to attachment. The purchaser would then have a right to demand an account and

settlement, and a transfer to himself of any balance or property to which the copartner whom he sued would have been entitled.

Where the trustee process, or process of foreign attachment, is in use, the better way would be for the sheriff to return a general attachment of all the interest of the debtor in the partnership property, and summon the other partners as the trustees of the debtor.

It must be stated, however, that the rules of law in regard to the liability of partnership property for the private debts of partners, and as to how any such liability may be enforced, are, at present, somewhat obscure and uncertain.

SECTION IX.

THE EFFECTS OF DISSOLUTION.

If the dissolution is caused by the death of any partner, the whole property goes to the surviving partners. They hold it, however, not as their own, but only for the purpose of settlement; and therefore they have, in relation to it, all the power which is necessary for that purpose, and no more. If they carry on the business with the partnership funds, they do so at their own risk; and the representatives of the deceased may require their share of the capital, and choose between calling on them, in addition, for interest, or for a share of the profits.

The survivors are not partners, but tenants in common (joint owners) with the representatives of the deceased of the stock or property in possession; and have all necessary rights to settle the affairs of the concern and pay its debts. After a dissolution, however caused, one who had been a partner has no authority to make new contracts in the name of the firm, as to make or indorse notes or bills with the name of the firm, even if he be expressly authorized to settle the affairs of the firm. There must be a distinct authority to sign for the others who were formerly partners. A parol authority will be sufficient, even if the general terms of the partnership had been reduced to writing.

It is common, where a partnership is dissolved by mutual consent, to provide that some one of the partners shall settle up the affairs of the concern, collect and pay debts, and the like.

But this will not prevent any person from paying to any partner a debt due to the firm; and, if such payment be made in good faith, the release or discharge of the partner is effectual.

If all the debts were assigned and transferred to any person, as his property, any debtor who had notice of this would be bound to make payment to this person alone; and if he paid anybody else, he would be obliged to pay the money over again.

It is frequently provided, that one partner shall take all the property and pay all the debts; but this agreement, though valid between the partners, has no effect upon the rights of third parties against the other partners; for they have a valid claim, against all the partners, of which they cannot be divested without their consent.

This consent of the creditor may be inferred, but not from slight evidence; thus, not from receiving the single partner's note as a collateral security, nor from receiving interest from him on the joint debt, nor from a mere change in the head of the account, charging the single partner and not the firm. Still, as the creditor certainly can assent to this arrangement, and accept the indebtedness of one partner instead of that of the firm, so it must be equally clear that such assent and intention will bind him, if distinctly proved by circumstances.

SECTION X.

LIMITED PARTNERSHIPS.

THESE have been introduced into some of our States, by statutes, which differ somewhat in their provisions. Generally, they require, first, one or more *general* partners, whose names shall be known; secondly, *special* partners, who do not appear as members, nor possess the powers or discharge the duties of actual partners; thirdly, a sum to be contributed by the special partners which shall be actually paid in; lastly, a statement of all these particulars, with such other information as may be needed for the security of the public, which must be verified under oath, signed by all the parties, acknowledged before a magistrate, and correctly published. When these and all other statutory requirements are complied with, the special partners may lose all they have put in, but cannot be held to any further

responsibility. But any neglect of them, or any material mistake in regard to them, even on the part of the printer of the advertisement, wholly destroys their effect; and then the special partner is liable for the whole debt, precisely like a general partner.

In a New York case, the amount contributed by the special partner was, by mistake of the printer, stated at \$5,000, instead of \$2,000, and it was held that the associates were liable as general partners, although the plaintiff did not show that he was actually misled by the error. In another New York case, it was held that an assignment of the partnership property, providing for the payment of a debt due to the special partner, ratably with the other creditors of the firm, or before all the other creditors are satisfied in full for their debts, is void as against the creditors; but it would be valid as against the assignor and those creditors who think proper to affirm it.

(96.)

Articles of Copartnership.

Articles of Agreement, made the _____ day of _____, 19____, between *(the names and residences of the two parties)* _____ as follows: The said parties above named have agreed to become copartners in business, and by these presents do agree to be copartners together under the name or firm of _____ in the business of _____ and in the buying, selling, and vending all sorts of goods, wares, and merchandise to the said business belonging, and to occupy the _____, their copartnership to commence on the _____ day of _____, and to continue _____ and to that end and purpose the said *(here state the contributions of each of the parties)* to be used and employed in common between them for the support and management of the said business, to their mutual benefit and advantage. And it is agreed by and between the parties to these presents, that at all times during the continuance of their copartnership, they and each of them will give their attendance, and do their and each of their best endeavors, and to the utmost of their skill and power exert themselves for their joint interest, profit, benefit, and advantage, and truly employ, buy, sell, and merchandise with their joint stock, and the increase thereof, in the business aforesaid. And also that they shall and will at all times during the said copartnership bear, pay, and discharge equally between them, all rents and other expenses that may be required for the support and management of the said business; and that all gains, profit, and increase that shall come, grow, or arise from or by means of their said business, shall be divided between them *(state whether equally, or in what proportions)* and all loss that

shall happen to their said joint business by ill commodities, bad debts, or otherwise, shall be borne and paid between them in the like proportion.

And it is agreed by and between the said parties, that there shall be had and kept at all times during the continuance of their copartnership, perfect, just, and true books of account, wherein each of the said copartners shall enter and set down, as well all money by them or either of them received, paid, laid out, and expended in and about the said business, as also all goods, wares, commodities, and merchandise, by them or either of them, bought or sold by reason or on account of the said business, and all other matters and things whatsoever to the said business and the management thereof in any wise belonging; which said books shall be used in common between the said copartners, so that either of them may have access thereto, without any interruption or hindrance of the other. And also the said copartners, once in ———, or oftener if necessary, shall make, yield, and render, each to the other, a true, just, and perfect inventory and account of all profits and increase by them, or either of them, made, and of all losses by them, or either of them, sustained; and also all payments, receipts, disbursements, and all other things by them made, received, disbursed, acted, done, or suffered in his said copartnership and business, and the same account so made shall and will clear, adjust, pay, and deliver, each to the other, at the time, their just share of the profits so made as aforesaid.

And the said parties hereby mutually covenant and agree to and with each other, that, during the continuance of the said copartnership, neither of them shall nor will indorse any note, or otherwise become surety for any person or persons whomsoever, without the consent of the other of the said copartners. And at the end, or other sooner determination of their copartnership, the said copartners, each to the other, shall and will make a true, just, and final account of all things relating to their said business, and in all things truly adjust the same; and all and every the stock and stocks, as well as the gains and increase thereof, which shall appear to be remaining, either in money, goods, wares, fixtures, debts, or otherwise, shall be divided between them, in the proportions aforesaid.

In Witness, etc.

(Signatures.)

VARIOUS COVENANTS AND CLAUSES WHICH MAY BE INTRODUCED IN ARTICLES
OF COPARTNERSHIP ACCORDING TO CIRCUMSTANCES.

Not to trust any one whom the Copartner shall forbid.

And that neither of the said parties shall sell or credit any goods or merchandise belonging to the said joint trade, to any person or persons, after notice in writing from the other of the said parties, that such person or persons are not to be credited or trusted.

Not to release any Debt without Consent, Etc.

And that neither of the said parties shall, without the consent of the other, release or compound any debt or demand, due or coming to them on account of their said copartnership, except for so much as shall actually be

received, and brought into the stock or cash account of the said partnership.

Not to be bound, or indorse Bills, Etc., for any one without Consent, Etc.

And that neither of the said parties shall, during this copartnership, without the consent of the other, enter into any deed, covenant, bond or judgment, or become bound as bail or surety, or give any note, or accept or indorse any bill of exchange for himself and partner, without the consent of the other first had and obtained, with or for any person whatsoever.

Neither Party to assign his Interest, Etc.

And it is agreed between the said parties, that neither of the said parties shall, without the consent of the other, obtained in writing, sell or assign his share or interest in the said joint trade, to any person or persons whatsoever.

Parties to draw Quarterly, Etc.

That it shall be lawful for each of them to take out of the cash of the joint stock the sum of _____ quarterly, to his own use, the same to be charged on account, and neither of them shall take any further sum for his own separate use, without the consent of the other in writing; and any such further sum, taken with such consent, shall draw interest after the rate of _____ per cent., and shall be payable together with the interest due, within _____ days after notice in writing given by the other of the said parties.

(97.)

Certificate of a Limited Partnership with Acknowledgment, and Oath.

This is to Certify, That the undersigned have, pursuant to the provisions of the statutes of the State of _____ formed a limited partnership, under the name or firm of _____ that the general nature of the business to be transacted is _____ (*describe the business*) and that _____ and _____ are the general partners and _____ is the special partner and that the said (*the special partner*) hath contributed the sum of _____ dollars, as capital towards the common stock, and that the said partnership is to commence on the _____ day of _____ and is to terminate on the _____ day of _____ 19____.

Dated this _____ day of _____ one thousand nine hundred and _____

(Signatures.)

State of _____ } ss.
County of _____ }

On the _____ day of _____ one thousand nine hundred and _____, before me came _____ known to me to be the individuals described in,

and who executed the above certificate, and they severally acknowledged that they executed the same.

State of _____ } ss.
County of _____ }

_____ the general partners named in the above certificate, being duly sworn do depose and say, that the sum specified in the said certificate to have been contributed by the special partner to the common stock has been actually and in good faith paid in cash.

Sworn this _____ day of _____, 19____, before me,

In some of the States, the oath should be made by the general partner; and it would always be safe for all the partners, general and special, to take the oath, and be included in the certificate.

CHAPTER XVIII.

CORPORATIONS.

A CORPORATION, as the term is used in mercantile law, is an association of individuals united into one collective body, under a special name, and possessing certain immunities, privileges and capacities in its collective character which do not belong to the natural persons composing it. The most important of these are, the capacity of succession, by which it continues to exist without regard to changes in its membership, the right to hold and convey property, real and personal, to sue and be sued, to make contracts, and to do other acts like an individual. The courts frequently speak of it as an "artificial person."

The fundamental distinction between a partnership and a corporation is that the former is merely an aggregation of individuals, having no personality of its own, and which therefore cannot be considered apart from the members composing it; whereas a corporation is, in the eye of the law, an entity, an artificial person, quite distinct from the individual stockholders.

From this difference of constitution result important practical differences, some of the principal of which are as follows. In a partnership the death of one partner dissolves the firm; while the death of a stockholder has no effect upon the corporation.

The interest of a partner cannot be transferred or assigned so as to make the assignee a member of the firm, without the express consent of the other partners; whereas by a transfer of the stock which represents the stockholder's interest in the corporation, the assignee becomes at once a member of the corporation without regard to the consent of the other stockholders. In a partnership each partner is the agent of all the others, and may bind them by his acts within the scope of the partnership business; on the other hand an individual stockholder has no power to bind the corporation, which can act only through such agents as the stockholders in their corporate capacity may select. Lastly, each partner is liable individually for all the debts of the firm, whereas a stockholder in a corporation is subject only to a limited liability—usually only to the extent of the stock which he holds.

Corporations are of many kinds, but we propose here to consider only those formed for the transaction of mercantile, manufacturing and other similar kinds of business. The comparative ease with which such corporations are managed, and the limited liability of the stockholders, have commended them to business men, and the greater part of the business of the country is now carried on in that form.

Formerly, corporations were usually created by special acts of the legislatures of the several States, but now, in every State there are general acts providing for the formation, regulation and management of corporations of different kinds, and in many of the States it is provided that no business corporation shall be formed by special act. These laws vary greatly in the different States. As to the formation of corporations under them, it would be impossible in a work of this kind to give even an abstract that would be of any practical value. We can only say that the business of organizing a corporation should always be entrusted to a competent lawyer, not only because it calls for accurate knowledge of the law and for legal skill and experience, but because failure to comply with all the requirements of the law may result in serious liabilities on the part of the stockholders and officers. We shall confine ourselves to the statement of a few general principles relating to the management of corporations, and add an abstract of the statutory liabilities of stockholders and directors.

A corporation is a "person" in the eye of the law, and laws relating to persons are held to include corporations so far as they are applicable.

In this country a corporation is a citizen of the State that creates it, or under whose laws it is organized. As such it has a right to sue and be sued in the courts of the United States. But it has no status as a citizen in any other State. As to such State it is a foreign corporation. It may by comity transact business in another State, but if it goes there for that purpose the State into which it goes may prescribe the conditions under which it may do business there, and may discriminate between it and domestic corporations. It may even go so far as to compel it to cease business in that State, as has been done in several instances in the case of foreign insurance companies. In several of the States foreign corporations are not permitted to own real estate.

As a corporation is purely a creature of the law, it can exercise only such powers as are given to it in its charter or act of incorporation. If it attempts to exercise powers not specifically or impliedly granted its charter is liable to forfeiture by the State, such acts being beyond its powers, or *ultra vires*, to use the legal phrase. Contracts *ultra vires* are not enforceable by the corporation, and the corporation itself may defend against them on the ground that they are beyond its powers. In this respect however charters are liberally construed, and are held to confer upon the corporation, not merely the powers specifically granted, but such other ancillary or incidental powers as are reasonably necessary to enable the corporation to carry on the business for which it was organized. And courts have frequently refused to sustain this defense where no statutory prohibition has been violated, and the contract in question was founded on a good consideration. Indeed, it has been held that the plea of *ultra vires* should not as a general rule prevail when it would not advance justice, but, on the contrary, would accomplish a legal wrong.

As to the conditions under which a corporation may commence business, the law varies widely in the different States. In some, the stock subscribed for may be made payable in instalments, either at definite fixed dates or on calls made by the directors as the business of the corporation may require. In

such cases, if the amount of any instalment is not paid when due, it is usually provided that the stock may be sold, and the proceeds, so far as necessary, applied to the payment of the instalment in arrear, the balance, if any, going to the stockholder. In other States no corporation is allowed to do business until the whole capital stock has been paid in, either in cash or in property. And in still others, while the corporation may commence business before the whole capital stock has been paid in, or even subscribed for, it is provided that no stock shall be issued for less than its par value, either in cash, or in property which in the judgment of the directors is of equivalent value. These laws are frequently evaded, usually by accepting in payment for stock property at much more than its actual value. While every allowance is to be made for honest difference of judgment, still, whenever the over-valuation is a glaring one, and it is manifest that the directors have not, in fact, exercised their judgment in the valuation of the property, there is no doubt that they may be held personally responsible for the deficiency of capital thus occasioned.

Usually the par value of shares of stock is fixed by the articles of incorporation or the by-laws. In New York, Maine and Virginia, however, under recent statutes, corporations may be formed in which the par value is not fixed, each share representing, simply, a fractional interest in the assets and property of the corporation.

STOCKHOLDERS.

The general control of the affairs of the corporation is vested in the stockholders. But they can exercise this control only in their corporate capacity, by vote at meetings held in accordance with the by-laws. Unless so authorized, no action of the stockholders is binding upon the corporation even if assented to by every stockholder. It is important to bear this in mind, as, not unfrequently, especially in small corporations, the stockholders act as though they were partners, without going through the formality of holding corporation meetings.

Stockholders' meetings can be held only in the State in which the corporation is organized, unless specially authorized by statute. In the following States they may be so held under certain conditions, viz. Alabama, Delaware, Michigan, Minne-

sota, Missouri, Montana, Nevada, Oklahoma, Pennsylvania, South Dakota and West Virginia. Notice of such meeting must be given to each stockholder in the manner prescribed by the by-laws, and it is usually provided that the notice shall specify the matters to be acted upon at the meeting. Stockholders may attend and vote personally, or by proxy; in the latter case the authority must be in writing, and in some States, as in Massachusetts, it is valid only for a limited period after its date. A written proxy may be revoked at any time. Each stockholder is entitled to one vote for each share of stock held by him. The by-laws may provide that a certain number of stockholders shall constitute a quorum for the transaction of business; usually the holders of a majority of the shares of stock issued. When this is the case no business can be transacted unless a quorum be present. In the absence of any provision to the contrary, those who attend a meeting of stockholders duly called and notified in accordance with the by-laws, represent the corporation, and a majority of the votes cast at such a meeting is sufficient for corporate action.

While the stockholders have the supreme control, the actual management of the business of a corporation is always in the hands of its officers and directors. Only certain general subjects relating to the organization and policy of the corporation are usually acted upon directly by the stockholders. They always choose the board of directors, and in some States, the treasurer, and the clerk or secretary. The right to remove directors or officers is also in their hands, although in many of the States the power to remove officers is given to the board of directors. Such matters also as the alteration or amendment of the charter and by-laws, the increase or reduction of capital stock or the sale of the corporate real estate, are usually decided by vote of the stockholders. In Illinois and New Jersey the adoption of by-laws is in the hands of the directors.

Individual stockholders have the right, at such reasonable times and in such reasonable manner as not to interfere with the business of the corporation, to examine its records, books and papers. This right, however, must be exercised in good faith and not adversely to the interests of the corporation. Accordingly, where a member of a rival company purchased a single share of stock and claimed the right as a stockholder to inspect

the books of the corporation, the court refused him permission to do so. In some States the right of stockholders to examine the books of the corporation is regulated by statute.

Original subscribers to the stock of a corporation are entitled to the rights of stockholders even if they have not received certificates. Purchasers from them, however, do not become members of the corporation until the rights of the former owner have been transferred to them in the manner required by the by-laws, and new certificates issued to them in their own names. Certificates of stock are transferable by indorsement, but they usually provide that the stock which they represent is transferable only on the books of the company by the stockholders, either in person or by attorney. Until this is done the transfer is not complete, and the purchaser will not be recognized by the corporation as a member, or entitled to dividends, or allowed to vote at meetings of stockholders. As between the parties, however, the indorsement and delivery of the certificate, with a power of attorney to transfer the stock on the books of the company, vests the title in the purchaser. In Massachusetts and some other States it is provided by statute that stock thus transferred, although standing on the books of the corporation in the name of the seller, is not subject to attachment by his creditors, thus giving to the assignment and delivery of the certificate the full effect which has generally been given to it by business men. If the assignment is properly made, the corporation cannot legally refuse to make the transfer in its books, or to issue a new certificate to the assignee, even though the latter is personally obnoxious to the officers of the company, or is hostile to its interests.

So long as the business of the corporation is conducted within the limits prescribed by its charter or articles of incorporation, an individual stockholder has no right to interfere with its management or policy by legal proceedings or otherwise. His only remedy is to endeavor to effect a change of management by the election of new directors and officers. He cannot even compel the corporation to declare dividends; but if a dividend is once declared he has a personal right of action for the amount payable to him.

If the corporation is exceeding its legal powers, or if the directors or officers are acting fraudulently or disregarding the

provisions of the charter and by-laws, or otherwise violating their duties as trustees for the stockholders, the stockholder must first endeavor to seek a remedy within the corporation itself, either by action at a corporation meeting, or by calling upon the directors and officers to take appropriate action. Only after exhausting these remedies in vain may he bring suit in his own name and in those of the other stockholders; to protect their rights. Any relief which he may obtain in this way will enure to the benefit of the whole body of stockholders, even if they have not personally become parties to the litigation.

DIRECTORS.

The active management of every business corporation is in the hands of its board of directors, subject to such limitations as may be contained in its articles of incorporation and by-laws. It is usually provided that they shall be stockholders, and in some States, as in Missouri, one or more members of the board must be citizens and residents of the State in which the company is incorporated.

They elect the president of the corporation from among their own number, and in many of the States they also elect the treasurer, the clerk or secretary and other officers and agents, and fix the amount of their compensation. When they have the right of election they also have that of removal, and they have the power of filling vacancies in their own number.

Unless forbidden by the articles of incorporation or the by-laws, they may hold their meetings out of the State. Records of their votes and transactions should be kept, either by a secretary chosen by them, or as is often provided, by the clerk or secretary of the corporation. It is held, however, that such records, while extremely important as matters of evidence, are not essential to the validity of the votes and acts of the directors.

Unless authorized by vote of the board itself, they cannot act singly, but only as a board at meetings called and held in the manner prescribed by the by-laws. A quorum must be present, consisting, unless the by-laws otherwise provide, of a majority of the board, and the vote of a majority of those present will then be binding upon the corporation.

Officers and directors of a corporation are trustees for the stockholders, and cannot without being guilty of fraud secure to themselves advantages not common to the whole body of stockholders. But a director may make a contract with the corporation, and as to such contract he stands on the same footing as a stranger. In all such cases, however, he is held to the utmost good faith, and the courts are prompt to relieve against any attempt of a director to take any unfair advantage of his official position in his dealings with the corporation. Accordingly, when directors have sold property to a corporation for an excessive price, or when they have bought property at a low price and have sold it to the corporation for a much higher price, they have been compelled to refund the profits thus made. And a contract between a corporation and one of its directors made by vote of a bare majority of the board of directors, of which majority he was one, was set aside by the court.

As a general rule directors, as such, are not entitled to compensation for their services. If, however, a director is employed to perform special services outside of his duties as a director, he is entitled to reasonable compensation for services so rendered.

Corporations are not bound by contracts entered into by their officers or directors beyond the scope of the business for which they are incorporated, or contrary to the provisions of their charter or by-laws; but they are liable for all contracts made by their authorized agents within the scope of their authority. Like individuals they are also responsible for the torts of their agents committed while in the performance of their authorized duties, as well as for their negligence.

It has often been said that a corporation cannot commit a crime; but this is true only in a limited sense. As the Supreme Judicial Court of Massachusetts say: "Corporations cannot be indicted for offenses that derive their criminality from evil intention, or which consist in a violation of those social duties which appertain to men and subjects. They cannot be guilty of treason or felony; of perjury or offenses against the person. But beyond this, there is no good reason for their exemption from the consequences of unlawful and wrongful acts committed by their agents in pursuance of authority derived from them. . . . There is no principle of law which would thus furnish immunity

to a corporation." This is undoubtedly the law at the present time. It is a matter of every-day occurrence for corporations to be indicted for violation of statutes, such as the Interstate Commerce laws, the laws relating to trusts and to the employment of women and children.

LIABILITIES OF STOCKHOLDERS, AND OF OFFICERS AND DIRECTORS.

Stockholders in national banks are liable for the debts of the bank to an amount equal to the par value of their stock. As a general rule, the liability of stockholders in State banks and banking companies, and in trust, guaranty and insurance companies, is the same. In other business corporations, except in a very few States, their liability is limited to the amount, if any, remaining unpaid on their stock. In some States, also, stockholders are liable for debts due to workmen, operatives and other employees for services rendered to the corporation.

Officers and directors are agents of the corporation, and as such, as responsible to the corporation under the general law of agency, in the same manner and to the same extent as the agents of a private individual. Thus, even without any statutory provision, they are liable to the corporation for loss or damages occasioned by their fraud, negligence or wilful violation of the charter or by-laws. Besides this general liability, however, the laws of every State have imposed upon them special liabilities and penalties for violations of duty, and in many cases have made them responsible to creditors for debts incurred through their misconduct.

At the present day a business man is frequently interested in corporations in different parts of the country; and it is important for him to know what liabilities he is incurring by owning stock, or becoming an officer or director in a corporation organized in any particular State. And it is important to remember, in this connection, that these liabilities depend upon the laws of the State where the corporation is organized, and not of that where it may be carrying on business. We therefore append to this chapter a brief abstract of the laws of the several States with reference to the statutory liability of stockholders, officers and directors of general business corporations—not including, however, banks and the other financial insti-

tutions above mentioned, or railroad, telegraph, telephone and insurance companies, which are usually incorporated under special statutes of their own.

ABSTRACT OF LAWS RELATING TO LIABILITIES OF STOCKHOLDERS AND DIRECTORS.

. ALABAMA.

Stockholders in business corporations are liable for debts of the corporation only to the extent of unpaid stock. Officers and directors depreciating stock or bonds with intent to purchase same at less than real value are liable to fine and imprisonment.

ALASKA.

In business corporations stockholder is liable to creditors for amount unpaid on his stock, but, except in insolvency or bankruptcy, only after judgment against the corporation. If bonded indebtedness exceeds amount of paid-in stock, or if stock or bonds be issued for more than cash value of property in reasonable judgment of directors, or if dividends be paid in excess of net profits, or if capital be reduced by loans to stockholders, or if reports or statements are not made as required by law or are materially false, directors assenting are jointly and severally liable to creditors for damages resulting therefrom. Officers also liable for failure to make reports, etc., required by law.

ARIZONA.

Stockholders in general business corporations are liable only to extent of unpaid stock. Directors concurring in making dividends except from surplus profits, or dividing any part of capital among stockholders, or receiving notes in payment of instalments on stock, or to enable a stockholder to withdraw money paid by him, or exchange stock for stock in another corporation, or making false statements in writing as to condition or affairs of corporation, are criminally liable. Every director present deemed to concur unless he causes dissent to be entered on minutes of meeting; and also if absent, and facts appear on minutes, and he remains a director for six months, and does not record dissent.

ARKANSAS.

Stockholders are liable only to extent of unpaid stock subscribed by each. Directors declaring dividends when corporation is insolvent, or violating provisions of corporation act thereby causing insolvency, are liable for corporation debts. President and secretary also liable in case of failure to file annual statement of financial condition.

CALIFORNIA.

Each stockholder, except in "limited" corporations, is individually and personally liable for such proportion of all its debts and liabilities contracted or incurred during the time he was a stockholder, as the amount of stock owned by him bears to the whole stock subscribed, and for like proportion of each debt of the corporation, and is not released by transfer of stock. Liability of stockholders in foreign corporations doing business in the State the same. In corporations having "Limited" at end of corporate name, stockholders liable only to extent of unpaid balance on stock. Directors jointly and severally liable for any money embezzled or appropriated by officers. Directors declaring dividends except from net profits, or creating debts beyond subscribed capital, or dividing or reducing capital stock except as authorized, jointly and severally liable for amount of such dividend, etc. Directors declaring dividends except from surplus profits, or paying any part of capital to stockholders, or receiving note in payment of instalment on stock, or to enable a stockholder to withdraw money paid, or exchanging stock, bonds, etc., of corporation for stock, etc., of another corporation, or making false statement as to condition or affairs of corporation, are also criminally liable. Every director present presumed to concur unless dissent is noted on minutes, or if absent and facts appear on minutes, if he remains a director for six months without causing dissent to be recorded.

COLORADO.

Stockholders are liable for debts of corporation only to extent of unpaid stock. Officers, directors and stockholders jointly and severally liable while fees for increase of capital stock remain unpaid.

Directors assenting to declaration of dividends when corporation is insolvent, or which would render it insolvent, or would diminish capital stock are jointly and severally liable for all debts then existing, and for all thereafter contracted while capital remains so diminished. In case of failure to file annual report of condition, officers and directors jointly and severally liable for all debts of corporation contracted during preceding year until report be filed.

CONNECTICUT.

Stockholders are liable only to extent of unpaid balance on stock held by them. Stockholders voting in favor of reduction of stock rendering corporation insolvent, jointly and severally liable to extent of such reduction for all debts then existing. Directors voting for dividend or distribution of assets except from net profits liable to fine. If such dividend or distribution renders corporation insolvent, they are also jointly and severally liable to amount of such payment for debts existing at time of vote.

DELAWARE.

Stockholders are liable to assessment until stock is fully paid; thereafter stock is non-assessable and not liable for debts of corporation. In case of reduction of stock, directors liable for debts contracted before

publication of certificate of reduction, and stockholders liable for amounts received through such reduction. If dividends be paid otherwise than from net profits, directors authorizing same are liable to extent of such dividend in case of insolvency or dissolution of corporation. Any director absent or dissenting may absolve himself by causing dissent to be entered on minutes of meeting, or by publication. Officers and directors liable for false statements of condition or of business of corporation, authorized by them. Articles of incorporation may state whether private property of stockholders is liable, and to what extent.

DISTRICT OF COLUMBIA.

Stockholders are liable for debts to extent of unpaid balance on stock held by them. Trustees (directors) declaring dividends which would render corporation insolvent, or diminish amount of capital stock, are liable for debts then existing and all thereafter contracted while they remain in office. Directors objecting may exempt themselves by filing certificate of objection with secretary of corporation and Recorder of Deeds of District. Any officer knowingly signing false certificate or report liable jointly and severally for debts of company contracted while stockholder and officer.

FLORIDA.

Stockholders of company doing business before recording copy of charter and filing certificate of payment of ten per cent. of capital stock liable for debts as though copartners. After dissolution, stockholders liable for debts to extent of unpaid balance of stock. Directors declaring dividends when company is insolvent, or which would make it so, jointly and severally liable for debts to the extent of such dividend. Directors absent or objecting not liable.

GEORGIA.

Stockholders are liable for debts to extent of unpaid stock. Persons organizing company and transacting business in its name before minimum amount of stock is subscribed for, liable to creditors to make good such minimum stock with interest. Liability of stockholders continues for six months after transfer.

HAWAII.

Stockholders liable for debts only to extent of unpaid balance of stock. Directors making dividends except from profits, or dividing any part of capital stock among stockholders, or reducing capital stock without express authority, jointly and severally liable, in event of dissolution, to full amount so divided or reduced.

IDAHO.

Stockholders liable for debts contracted while stock is owned by them, to extent of unpaid balance on such stock. Directors authorizing dividends except from surplus profits; or withdrawing or paying to stockholders any part of capital stock; or discounting or receiving notes in payment of instalment, or to enable stockholder to withdraw money paid for stock; or receiving from other corporations shares of stock, notes, bonds, etc., of

such corporation in exchange for stock in their own corporation, are guilty of misdemeanor. Any director presumed to assent if present unless he causes dissent to be entered on minutes of meeting, or, if absent, unless he causes dissent to be entered within six months. Such directors also jointly and severally liable in event of dissolution for full amount of dividend or capital stock so paid or withdrawn.

ILLINOIS.

Stockholders are liable for debts to the extent of unpaid balance on stock owned by them. Directors and officers declaring and paying dividends when corporation is insolvent, or which would make it insolvent, or which would diminish the amount of capital stock, jointly and severally liable for all debts then existing, or thereafter contracted while they remain in office. Directors and officers assenting to incurring indebtedness in excess of amount of capital stock, liable to creditors for such excess. Officers signing report, etc., containing statement known by them to be false, jointly and severally liable for all damages suffered.

INDIANA.

Stockholders in corporations organized prior to 1851 are liable to amount equal to that of stock held when debts were contracted. Stockholders in manufacturing and mining companies liable only for amount of stock subscribed for, but are also individually liable for debts due laborers, servants, apprentices and employees. Stockholders in railroads individually liable for labor in construction of road after assets of corporation are exhausted. If any part of stock be withdrawn and divided before payment of debts, stockholders jointly and severally liable for such debts.

IOWA.

Stockholders are liable to extent of unpaid instalments of stock. Failure to comply with legal requirements as to organization and publicity also renders individual property liable for debts. No other liability unless articles of incorporation otherwise provide. Intentional deception as to means and liabilities of corporation, diversion of funds of corporation to objects other than those mentioned in its articles, and payment of dividends leaving insufficient funds to meet liabilities, render officers and directors liable for damages, and such dividends in the hands of stockholders subject to claims of creditors. Officers and directors are also subject to penalties for such violations of law. Declaring dividends when corporation is insolvent, or which would make it insolvent, or diminish amount of capital, renders officers and directors consenting jointly and severally liable for debts then existing. If indebtedness exceeds amount permitted by law, officers and directors consenting liable to creditors for such excess.

KANSAS.

Stockholders are liable only for unpaid balance of original subscription. Dividends only from net profits. Directors declaring dividends when corporation is insolvent, or which would render it insolvent, jointly and severally

liable for debts then existing, or those thereafter contracted while they are in office, to the extent of such dividend. Directors absent or not assenting exempted by filing objection with the secretary.

KENTUCKY.

Stockholders in banks, and in trust, guaranty, investment and insurance companies liable equally and ratably for all contracts and liabilities to extent of par value of stock in addition to such stock; in other corporations only for unpaid part of stock subscribed for by them. Officers and directors publishing or assenting to any written report of condition or business of corporation false in any material respect, jointly and severally liable for any resulting loss or damage.

LOUISIANA.

Stockholders liable only for unpaid balance on shares subscribed for by them. Transferees not liable. There is no statutory liability of officers and directors.

MAINE.

Stockholders, except in banks and trust and banking companies, liable for debts only to extent of unpaid balance of stock subscribed for. Directors voting for or aiding in making dividend resulting in reduction of capital stock before all debts are paid, subject to penalty, and dividends so paid may be recovered. Directors in corporations whose stock has no fixed par value jointly and severally liable for debts incurred before authorized capital stock, or any increase thereof, is paid in full. Creditor must serve notice on director within one year after debt incurred, and director paying subrogated to claim against corporation and entitled to contribution from co-directors.

MARYLAND.

Stockholders, except in banking, safe deposit, trust and loan companies, liable only to extent of unpaid subscription to stock. Directors declaring dividends when corporation is insolvent, or which would make it insolvent, or diminish amount of capital stock, jointly and severally liable to extent of dividends for all debts existing or thereafter declared while respectively in office. Directors objecting exempted by filing certificate of objection with clerk of court where certificate of incorporation is recorded. Directors also responsible for loans made to stockholders or directors. Officers or directors consenting to issue of stock otherwise than provided in Act, or wilfully assenting to false statements as to affairs of corporation liable, to penalty.

MASSACHUSETTS.

Stock can be issued only for full value received. Stockholders in corporation which reduces its capital stock contrary to law liable for debts and contracts then existing, to extent of amount withdrawn and paid them respectively. They are also liable for money due operatives for services rendered within six months before demand on corporation, but with right of

contribution from other stockholders. President, treasurer and directors jointly and severally liable for all debts and contracts made while they are officers if stock is issued in violation of law, or statement or report required by law and signed by them is false in any material respect, and liable to any stockholder for damages caused by such issue. Directors jointly and severally liable for declaring dividends when corporation is insolvent, or which would make it so, to extent of such dividends, and for debts contracted between loan to stockholders or directors and its repayment, to extent of loan. Directors voting against such dividends or loans not liable.

MICHIGAN.

Stockholders in all corporations individually liable for all labor performed for corporation while holding their stock; also for capital stock withdrawn and refunded to them before all debts are paid, to extent of amount received. Directors ordering or assenting to any violation of Corporation Act jointly and severally liable for all debts contracted after such violation to extent of three times amount paid in on stock standing in their names.

MINNESOTA.

Every stockholder, except in mining, manufacturing or mechanical business, is liable to extent of amount of stock held by him. Stockholders in every corporation liable for corporate debts: 1. For all unpaid instalments on stock owned by them or transferred to defraud creditors; 2. For failure of corporation to comply with provision of law as to organization and publicity; 3. For personally violating any such provisions in transaction of business of corporation, as officer, director or member, or for fraudulent or dishonest conduct in discharge of any official duty. Officers and directors guilty of diversion of corporate property to objects other than those specified in certificate of incorporation, when injury to any individual results, or of declaring dividends when profits are insufficient, or remaining funds will not meet corporate liabilities, or of intentional deception as to means or liabilities of corporations, are liable criminally.

MISSISSIPPI.

Stockholders are liable for debts contracted during their ownership of stock to amount of unpaid balance of stock subscribed for, and liability continues for one year after sale or transfer of stock. Directors of trading corporation liable for excess of debts over amount of capital stock paid in. Directors assenting to withdrawal of stock or declaration of dividend, when corporation is insolvent or would thereby be rendered insolvent, and stockholders receiving it, jointly and severally liable for debts then existing, to extent of such withdrawal of dividend and interest.

MISSOURI.

Stockholders are liable to extent of unpaid balance on their stock. Original subscriber not held after transfer. Officers and directors knowingly purchasing property for corporation for more than its actual value jointly and severally liable for debts to extent of such excess; but any

one absent or objecting exempted by filing objection with the clerk. Directors declaring dividend when corporation is insolvent, or which would make it so, or diminish amount of capital stock, jointly and severally liable for debts then existing, and for all thereafter created while they remain in office to extent of such dividend, unless exempted as above.

MONTANA.

Stockholders are liable for debts only to extent of unpaid balance of stock. Directors jointly and severally liable for dividing or withdrawing any part of capital stock or creating debts in excess of subscribed capital stock, or declaring dividends except from surplus profits, to the extent of such withdrawal, excess, or dividend, and also subject to criminal prosecution. Any director absent or objecting may be exempted by causing notice of objection to be entered on minutes of meeting. Unless annual report be filed when due, directors liable for debts incurred before filing.

NEBRASKA.

Stockholders are liable, after assets of corporation are exhausted, to extent of unpaid subscription to stock, and liability follows stock transferred. They are also jointly and severally liable, in case of failure of corporation to comply with provisions of statute as to notice and other requisites of organization, to extent of such unpaid subscription and amount of stock in addition; and to same extent, in case of failure to publish annual statement of liabilities, for all debts then existing or thereafter incurred until such publication is made. In case corporation is dissolved on account of misconduct of officers or directors, such officers or directors are liable to action by any one injured. In case of deception by corporation as to its means or liabilities, those responsible are subject to fine and to payment of double damages to persons injured.

NEVADA.

Stockholders are liable for debts only to extent of unpaid balance on stock, unless articles of incorporation provide for assessments. Directors declaring dividends except from net profits, or paying to stockholders any part of capital stock, or reducing capital stock except as authorized by statute, jointly and severally liable to full amount divided or withdrawn. Director absent or dissenting exempted by causing notice of dissent to be entered on minutes of directors' meeting. Directors authorizing publication of false statements as to condition or business of corporation jointly and severally liable for any loss or damage.

NEW HAMPSHIRE.

Every stockholder, except in banks and railroads, liable for all debts and contracts until whole amount of capital, or so much as corporation has voted to issue, has been paid in and certificate filed with clerk of city or town. Stockholders unlawfully receiving loan from corporation, or sum withdrawn from capital stock, or unlawful dividends, liable for debts to amount so received until repaid. In case of failure to make annual return showing

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assets and debts of corporation, treasurer and directors individually liable for debts and contracts then existing or thereafter contracted until return is made.

NEW JERSEY.

Stockholders are liable only to amount unpaid on stock held by them. In case of failure to publish certificate of any decrease of capital stock, directors are jointly and severally liable for all debts contracted until the filing of certificate, and stockholders liable for sums received from such reduction. Directors making dividends except from surplus profits, or withdrawing or paying to stockholders any part of capital stock, or unlawfully reducing capital, jointly and severally liable to full amount of any loss thereby sustained by corporation. Directors present causing dissent to be entered on minutes at meeting, or, if absent, on learning of such action, exempt from liability.

NEW MEXICO.

Stockholders are liable for sums necessary to complete the amount of each share held by them as fixed by charter. Corporation may, however, by filing and publishing special certificate, provide that there shall be no stockholders' liability on account of any stock issued. Such corporation must add to its corporate name the words, "No Stockholders' Liability." In case of failure to publish certificate of decrease of capital stock, directors jointly and severally liable for all debts contracted before filing certificate. Directors making dividends except from net profits, or withdrawing or paying stockholders any part of capital stock, or unlawfully reducing capital stock, jointly and severally liable in case of dissolution or insolvency to full amount of such dividend, etc., and interest, and stockholders liable for amounts received. Director absent or dissenting may exempt himself by causing dissent to be entered on directors' minutes at the time, or forthwith on receiving notice, or by causing copy of dissent to be published within two weeks in newspaper in county of corporation's place of business.

NEW YORK.

Stockholders are liable to amount unpaid on stock for debts contracted while stock was held by them. Also jointly and severally liable for debts due to laborers, servants and employees other than contractors, for services. No action until judgment against corporation, and execution not satisfied. Not liable for debt not payable within two years from time when contracted, nor unless action is brought within two years after debt is due, nor after ceasing to be stockholders unless action is brought within two years thereafter. Directors declaring dividends except from surplus profits, or withdrawing or paying to stockholders any part of capital stock, or reducing capital stock without authority, jointly and severally liable for full amount of dividend or capital so withdrawn or reduced, and guilty of misdemeanor. Directors absent, or noting dissent on minutes of directors at the time, exempt. Directors consenting to unsecured debt in excess of paid-

up capital, or over issue of secured bonds and obligations, liable for amount of such obligations, and for damages to holders. Officers and directors, except in moneyed corporations, loaning corporate funds to stockholders, liable to extent of loan and interest for debts contracted before repayment; and officers and directors making any prohibited transfer of property, or signing any report, etc., containing materially false representations, liable for any loss thereby sustained.

NORTH CAROLINA.

Stockholders are liable only to extent of unpaid balance on stock. In case of failure to publish certificate of decrease of capital, directors jointly and severally liable for all debts contracted before filing certificate, and stockholders liable for amount received. Directors declaring dividends except from surplus or net profits, or when debts of corporation exceed two-thirds of its assets, or withdrawing and paying to stockholders any part of capital stock except as authorized by law, jointly and severally liable in event of dissolution or insolvency for amount of such dividend or reduction. Director not present or dissenting may exonerate himself by causing dissent to be entered on the minutes at the time, or when he has notice.

NORTH DAKOTA.

Stockholders are generally liable only to extent of amount unpaid on stock held by them; but stockholders in mining, manufacturing or industrial corporations are jointly and severally liable for debts due to mechanics, workmen and laborers in action commenced within four months after execution against corporation returned unsatisfied. Directors consenting to dividends except from surplus profits, or to division, withdrawal or reduction of capital stock, or creating debts beyond subscribed stock, excepting certain liabilities of insurance and loan and trust companies, jointly and severally liable, in event of dissolution or insolvency, to full amount of dividend, capital withdrawn, paid out or reduced, and for debts beyond subscribed capital. Every director, officer and stockholder having knowledge of issue of bonds by corporation contrary to provisions of statute, and not dissenting and causing dissent to be entered on records of corporation, jointly and severally liable for debt created by issue of such bonds.

OHIO.

Stockholders in corporations created since Nov. 23, 1903, are liable only to extent of amount unpaid on their stock; prior to that date there was a liability to an amount equal to stock in addition to the stock. No liability of preferred stockholders until remedy against common stockholders exhausted, and suit must be brought within eighteen months after liability is enforceable. Directors declaring dividends except from surplus profits, or advertising a larger amount of capital stock than has been subscribed and paid in, or a larger dividend than has been earned and paid, liable for any loss thereby sustained by creditors or stockholders.

OKLAHOMA.

Stockholders generally liable only to extent of unpaid balance on stock; but in industrial corporations jointly and severally liable for debts due mechanics, workmen and laborers if action is brought within four months. Directors declaring dividends except from surplus profits, or dividing or paying to stockholders any part of capital, or reducing capital except as provided by law, or creating debts beyond subscribed capital, jointly and severally liable in event of dissolution to amount of such dividend, reduction or debt. Absent directors and those causing dissent to be entered on directors' minutes not responsible. Officers and directors making false statements in any report, etc., in relation to corporation or its business jointly and severally liable for all damages. Directors of corporations violating any statute provisions and thereby rendering it insolvent jointly and severally liable for all debts contracted after such violation.

OREGON.

Stockholders, except in banking corporations, liable only to extent of amount unpaid on their stock. Directors declaring dividends when corporation is insolvent, or which render it insolvent, or diminish amount of capital, jointly and severally liable for debts then existing or incurred while they remain in office. If by any official act or conduct they fraudulently induce any person to give credit to the corporation, they are liable for any loss sustained. Any director voting against such dividend, etc., or, if absent, filing objections as soon as it comes to his knowledge, is exempt.

PENNSYLVANIA.

Stockholders are liable for unpaid balance on stock; also to extent of their stock for amounts due laborers, clerks and operatives, for services rendered within six months before demand on corporation. Directors declaring dividends when company is insolvent, or which would render it insolvent, jointly and severally liable to extent of such dividend for all debts then existing, or thereafter contracted while they continue in office. Directors absent or objecting exempted by filing objections with clerk of company. Making false statements in writing as to business or affairs of corporation is a criminal offense.

THE PHILIPPINES.

There is no provision in the Corporation Law imposing any statutory liability either on stockholders or directors.

PORTO RICO.

Stockholders liable only for unpaid balance on stock. Directors and officers signing false certificate or notice jointly and severally liable for debts contracted while directors or officers. Directors authorizing indebtedness in excess of paid-up capital, or of value of property and assets, jointly and severally liable for such indebtedness. Directors declaring dividends except from surplus profits, or dividing or paying any of capital

to stockholders, or reducing capital except as authorized by law, jointly and severally liable, in event of dissolution or insolvency, for amount of such dividends, etc. Director not assenting may exonerate himself by causing dissent to be entered on directors' minutes at the time, or when he learns of such act.

RHODE ISLAND.

Stockholders in manufacturing companies are jointly and severally liable for debts, but only to extent of their shares fully paid up, until whole capital is paid in and certificate recorded. Directors declaring dividend when corporation is insolvent, or which would render it insolvent, jointly and severally liable to extent of such dividend for debts then existing or thereafter contracted while they remain in office. Absent or dissenting directors filing objection with clerk of company, exempt. Directors authorizing debts in excess of capital paid in, liable to extent of such excess for debts then existing or thereafter contracted while they remain in office and until debt reduced to amount of capital stock. Absent or objecting director exempted by giving notice to stockholders at meeting which he may call. If any part of capital be withdrawn from payment of debts contracted before filing certificate of reduction of stock, directors jointly and severally liable for payment of such debts.

SOUTH CAROLINA.

Stockholders in insolvent corporations, except banks and banking institutions, liable only to amount remaining due to corporation on their stock. Directors are criminally liable for fraudulent misrepresentation in certificate as to increase or decrease of capital, or false statement as to condition of corporation, or for declaring dividends not actually earned.

SOUTH DAKOTA.

Stockholders, except in banks, liable only to extent of amount unpaid on stock. Directors jointly and severally liable for illegally reducing capital stock, for making dividends except from surplus profits, and for creating debts beyond subscribed capital stock, to amount so divided, withdrawn, paid out or reduced, or debt contracted. If by violation of statutes applying to business corporations they render it insolvent, they become liable for all debts contracted after such violation. They are liable also for damages occasioned by false representations as to corporation or its business.

TENNESSEE.

Stockholders are liable to extent of unpaid subscription, and transfer of stock does not relieve from liability; in mining, quarrying, manufacturing and certain other corporations, they are liable also for debts due to laborers, servants and employees. Directors declaring dividends when company is insolvent, or which would diminish amount of capital stock, jointly and severally liable for amount of dividends. Director voting against dividend, or filing objections as soon as he learns of it, exempt. Diversion of funds of corporation to other objects than those mentioned in

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act of incorporation, payment of dividends leaving funds insufficient to pay liabilities, keeping false books or making false reports, intentional fraud in not complying with articles of incorporation or in deceiving the public or individuals as to liabilities, renders all participating officers, stockholders or directors subject to penalties, and liable for damages to persons injured.

TEXAS.

Stockholders liable only to extent of amount unpaid on stock. Directors declaring dividend when company is insolvent, or which would make it insolvent, jointly and severally liable to extent of such dividend for all debts then existing, or thereafter contracted while they are in office. Director absent or objecting may file objection with secretary and be exempt.

UTAH.

Unless act of incorporation otherwise provides, stockholders, except in banks, liable only to extent of balance unpaid on stock. Directors making dividends except from surplus profits, or withdrawing or dividing any part of capital stock except as provided by law, or receiving notes in payment of instalment on stock, or to enable stockholders to withdraw money paid, or receiving stock or bonds of other companies for those of their own, or making false representation as to condition of corporation, guilty of misdemeanor. Director dissenting and causing dissent to be entered on directors' minutes, exempt.

WASHINGTON.

Stockholders are liable only for amount unpaid on their subscription to capital stock. Directors declaring dividend except from net profits, or withdrawing and dividing among stockholders any part of capital, or reducing capital stock except as provided by law, jointly and severally liable, in case of dissolution, for amounts so paid or divided. Those not present, or causing dissent to be entered on minutes, not responsible. Directors authorizing false statements of condition or affairs of corporation liable to fine and imprisonment.

WEST VIRGINIA.

Stockholders, except in banks, liable only to amount of stock subscribed for and unpaid. Directors present at meeting of board where dividend is declared diminishing the capital, and not causing their dissent to be entered on record, jointly and severally liable for amount of such diminution, and every stockholder liable for amount of capital so received by him.

WISCONSIN.

Stock can be issued only on payment of full value in money, labor or property, and stockholder liable only for unpaid subscription. Stockholder receiving dividends not declared from net profits, or impairing capital, liable for return of same, unless capital be made good. If capital be diminished by corporate vote, stockholder liable for all debts then unpaid to

extent of amount paid him, and stockholders voting for such diminution jointly and severally liable to creditors for whole amount of such diminution, but with right of contribution from other stockholders. Stockholders, except in railroads, liable to amount equal to that of their stock for debts due to clerks, servants and laborers, for not exceeding six months' services. If stock not fully paid be transferred, corporation may agree to discharge holder and accept liability of new owner for amount unpaid, but original owner still liable to the then creditors, and those becoming such within six months. Directors declaring dividend before capital stock is all paid in, when corporation is insolvent, or in danger of insolvency, jointly and severally liable for debts then existing. Directors and officers making false statements in writing as to affairs of corporation with intent to deceive or defraud subject to penalty.

WYOMING.

Stockholders are liable only to extent of unpaid assessments on stock. Directors declaring dividends when corporation is insolvent, or which would render it insolvent, or diminish the amount of capital stock, jointly and severally liable for all debts then existing and all thereafter contracted while they remain in office; directors objecting, and before time for payment of dividend filing objection with clerk of corporation and register of deeds, exempt. Directors publishing false statements as to condition or affairs of corporation, subject to fine or imprisonment.

CHAPTER XIX.

ARBITRATION.

SECTION I.

OF THE SUBMISSION AND AWARD.

THE law favors arbitration in many respects as a peaceable and inexpensive mode of settling difficulties. Parties may agree to refer a question by an oral agreement, or by a written agreement. The form is not essential. But it is always best to reduce the agreement to writing, and to express it carefully. But parties may, in many of our States, go before a magistrate and agree to refer in the manner pointed out by the statute. In all of them a case may be taken out of court and submitted to referees under an order of court.

The first essential of an award, without which it has no force whatever, is, that it be conformable to the terms of the submission. The authority given to the arbitrators should not be exceeded; and the precise question submitted to them, and neither more nor less, should be answered. Neither can the award affect strangers (or those who are not parties to it); and, if one part of it is that a stranger shall do some act, it is not only of no force as to the stranger, but of no force as to the parties if this unauthorized part of the award cannot be taken away without affecting the rest of the award.

Nor can it require that one of the parties should make a payment, or do any similar act, to a stranger. But if the stranger is mentioned in an award only as agent of one of the parties, which he actually is, or as trustee, or as in any way paying for, or receiving for, one of the parties, this does not invalidate the award. And in favor of awards, it has been said that this will be supposed, where the contrary is not indicated.

If the award embrace matters not included in the submission, it is fatal. If however, the portion of the award which exceeds the submission can be separated from the rest without affecting the merits of the award, it may be rejected, and the rest will stand; otherwise the whole is void. If the submission specify the particulars to which it refers, or if, after general words, it make specific exceptions, its words must be strictly followed.

If these words are very general, they will be construed liberally, but yet without extending them beyond their fair meaning. On the other hand, all questions submitted must be decided, unless the submission provides otherwise; and either party may object to an award, that it omits the decision of some question submitted; but the objection is invalid if it be shown that the party objecting himself withheld that question from the arbitrators. Nor is it necessary that the award embrace all the topics which might be considered within the terms of a general submission. It is enough if it pass upon those questions brought before the arbitrators, and they are so far distinct and independent that the omission of others leaves no uncertainty in the award. If the award does not embrace all of the matters within the submission which were brought to the notice of the arbitrators, it is altogether void.

In the next place, an award must be *certain*; that is, it must be so expressed that no reasonable doubt can be entertained as to the meaning of the arbitrators, the effect of the award, or the rights and duties of the parties under it. For the very purpose of the submission, and the end for which the law favors arbitration, is the final settlement of all questions and disputes; and this is inconsistent with uncertainty.

In the next place, the award must be *possible*; for an award requiring that to be done which cannot be done is senseless and useless. But the impossibility which vitiates an award is one which belongs to the nature of the thing, and not to the accidental disability of the party at the time. Thus, if he be ordered to pay money on a day that is past, this is void; so if he be required to give up a deed which he neither has nor may expect to have; but if he be directed to pay money, the award is good, although he has no money, for it creates a valid debt against him. Nor can a party avoid an award on the ground of an impossibility created by himself, after the award, or indeed beforehand, if he created it for the purpose of evading an expected award.

This impossibility may be actual, or it may be that created by law; for an award which requires that a party should do what the law forbids him to do is void, either in the whole, or else for so much as is thus against the law, if that illegal part can be severed from the rest.

An award must be *reasonable*: if it be of things in themselves of no value or advantage to the parties, or out of all proportion to the justice and requirements of the case, or if it undertake to determine for the parties what they should determine for themselves, as that the parties should intermarry, it is void.

Lastly, the award must be *final* and *conclusive*. This necessity springs also from the very purpose for which the law favors arbitration, namely, the settlement and closing of disputes. It is not a valid objection to an award, that it is upon a condition, if the condition be clear and certain, consistent with the rest of the award, in itself reasonable, and such that there could be no doubt whether it were performed or not, or what were the rights or obligations dependent upon it.

An award may be open to any or all of these objections in part, without being necessarily void in the whole. So much of it as is thus faulty is void; but if this can be severed distinctly from the residue, leaving a substantial, definite, and unobjectionable award behind, this may be done, and the award then will take effect. It is therefore void in the whole because bad in part, only where this part cannot be severed from the residue; or where, if it be severed and amended, leaving the residue in force, one of the parties will be held to an obligation imposed upon him, but deprived of the advantage or recompense which it was intended that he should have. Generally, in the construction of awards, they are favored and enforced, wherever this can properly be done.

If the submission be in the most general terms, and the award equally so, covering "all demands and questions" between the parties, either party may still show that a particular demand either did not exist, or was not known to exist, when the submission was entered into, or that it was not brought before the notice of the arbitrators, or considered by them; and then the award will not be permitted to affect this demand.

If, by an award, money is to be paid in satisfaction of a debt, this implies an award of a release on the other side, and makes this release a condition to the payment.

There is no especial form of an award necessary in this country. If the submission requires that it should be sealed, it must be so. And if the submission was made under a statute, or under a rule of court, the requirements of the statute or the rule should be followed. But even here mere formal inaccuracies would seldom be permitted to vitiate the award.

If the submission contains other directions or conditions, as that it should be delivered to the parties in writing, or to each of the parties, such directions must be substantially followed.

Thus, in the latter case, it has been held that it is not enough that a copy be delivered to one of the parties on each side, but each individual party must have one.

It may happen, where an award is offered in defense, or as the ground of an action, that it is open to no objection whatever for anything which it contains or which it omits; and yet it may be set aside for impropriety or irregularity in the conduct of the arbitrators, or in the proceedings before them. Awards are thus

set aside if "procured by corruption or undue means." This rule rests indeed, on the common principle, that fraud vitiates and avoids every transaction.

So, too, it may well be set aside if it be apparent on its face that the arbitrator has made a material mistake of fact or of law. It must, however, be rather a strong case in which the court would receive evidence of a mere mistake, either in fact or in law, which did not appear in the award, and was not supposed to spring from or indicate corruption.

Another instance of irregularity is the omission to examine witnesses; or an examination of them when the parties were not present, and their absence was for good cause; or a concealment by either of the parties of material circumstances; for this would be fraud. So if the arbitrators, in case of disagreement, were authorized to choose an umpire, but drew lots which of them should choose him. But it has been held enough that each arbitrator named an umpire, and lots were drawn to decide which of these two should be taken, because it might be considered that both of these men were agreed upon. And if an umpire be appointed by lot, or otherwise irregularly, if the parties agree to the appointment, and confirm it expressly, or impliedly by attending before him, with a full knowledge of the manner of the appointment, this covers the irregularity.

SECTION II.

THE REVOCATION OF A SUBMISSION TO ARBITRATORS.

It is an ancient and well-established rule, that either party may revoke his submission at any time before the award is made; and by this revocation render the submission wholly ineffectual, and of course take from the arbitrators all power of making a binding award. And, generally, this power exists until the award is made.

In this country, our courts have always excepted from this rule submission made by order or rule of court; for a kind of jurisdiction is held to attach to the arbitrators, and the submission is quite irrevocable, except for such cases as make it necessarily inoperative.

There is a strong reason why a submission by order of court, or before a magistrate, should be preferred where it can be had, from the fact above stated, that the law permits any party who finds an award is going against him to revoke his submission or reference when he will, before the award is made; provided the award was only by agreement out of court, or not before a magistrate. In some of our States, the statutes authorizing and regulating arbitration provide for the revocation of the submission.

It should be stated, however, that, as an agreement to submit is a valid contract, the promise of each party being the consideration for the promise of the other, a revocation of the agreement or of the submission is a breach of the contract, and the other party has his damages. And damages would generally include all the expenses the plaintiff has incurred about the submission, and all that he has lost by the revocation, in any way.

If either party exercise this power of revocation, he must give notice in some way, directly or indirectly, to the other party; and until such notice, the revocation is inoperative.

Bankruptcy or insolvency of either or both parties does not necessarily operate as a revocation, unless the terms of the agreement to refer, or the provisions of the insolvent law, require it. But the assignees acquire whatever power of revocation the bankrupt or insolvent possessed, and, generally at least, no further power.

The death of either party before the award is made vacates the submission, if made out of court, unless that provides in terms for the continuance and procedure of the arbitration, if such an event occur. But a submission under a rule of court is not revoked or annulled even by the death of a party. So the death or refusal or inability of an arbitrator to act would annul a submission out of court, unless provided for in the agreement; but not one under a rule of court, unless for especial reasons, satisfactory to the court, which would make an appointment of a substitute, if it saw fit to continue the reference.

It may be well to add, that, after an award is fully made, neither of the parties without the consent of the other, nor either nor all of the arbitrators without the consent of all the parties, have any further control over it.

If the submission provides for any method of delivering the award, this should be followed. If not, it is common for the referees to deliver the award to the prevailing party or his attorney, on payment by him of the fees of arbitration. Then the prevailing party looks to the losing party, for the whole, or a part, or none of the costs, as the award may determine.

The award should be sealed, and addressed to all the parties; and it should not be opened except in presence of all the parties, or of their attorneys, or with the consent of those absent indorsed on the award. If the submission is under a rule of court, it should be returned to court by the arbitrators, or the counsel receiving it, sealed, and opened only in court, or before the clerk, or with the written consent of parties.

The submission, or agreement to refer, may be made by exchange of Bonds, each party executing and delivering a Bond to the other party.

This would be a formal proceeding. But, as has been already said, no especial form is necessary; and often a very simple one, like that below, would suffice.

(99.)

Simple Agreement to Refer.

Know all Men, That we, _____ of _____, and _____ of _____, do hereby promise and agree, to and with each other, to submit, and do hereby submit, all questions and claims between us (or any specific question or claim, describing it) to the arbitrament and determination of (*here name the arbitrators*) whose decision and award shall be final, binding, and conclusive on us; (*add if there are more arbitrators than one, and it is intended that they may choose an umpire*) and, in case of disagreement between the said arbitrators, they may choose an umpire, whose award shall be final and conclusive; (*or add, if there be more than two arbitrators*) and, in case of disagreement, the decision and award of a majority of said arbitrators shall be final and conclusive.

In Witness Whereof, etc.

(Signatures.)

(100.)

Arbitration Bond. One or more Arbitrators.

Know all Men by these Presents, That I, _____ (*one of the parties*) am held and firmly bound unto _____, (*the other party*) in the sum of _____ dollars, lawful money of the United States of America, to be paid to the said _____ (*the other party*) executors, administrators, or assigns;

for which payment, well and truly to be made, I hereby bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal. Dated the _____ day of _____ one thousand nine hundred and _____.

The Condition of the above Obligation is such, That if the above bounden _____ shall well and truly submit to the decision of _____ named, selected, and chosen arbitrator (*or arbitrators*) as well by and on the part and behalf of the said _____ as of the said _____ between whom a controversy exists, to hear all the proofs and allegations of the parties of and concerning _____ (*here set forth the claims or questions referred*) and all matters relating thereto; it being understood and agreed by and between the parties to these presents that the award of the said arbitrator (*or arbitrators*) be made in writing, subscribed by him (*or them*) and attested by a subscribing witness, ready to be delivered to the said parties on or before the _____ day of _____ next, and that before proceeding to take any testimony therein, the arbitrator (*or arbitrators*) shall be sworn, faithfully and fairly to hear and examine the matters in controversy between the parties to these presents, and to make a just award according to the best of his (*or their*) understanding; the said parties to these presents hereby further agreeing, that judgment in the case of (*here specify any case pending in court between the parties relating to the matters in arbitration*) shall be rendered upon the award which may be made pursuant to this submission, to the end that all matters in controversy in that behalf, between them, shall be finally concluded. Then the above obligation to be void, otherwise to remain in full force and virtue.

(Signature.) (Seal.)

Signed, Sealed, and Delivered in presence of

(To make the contract complete, the other party should execute and deliver a counterpart of this Bond.)

(101.)

Award of Arbitrators.

To all to whom these Presents shall come, We _____ (*names of the arbitrators*), to whom were submitted as arbitrators the matters in controversy existing between _____ as by the condition of their respective bonds of submission, executed by the said parties respectively, each unto the other, and bearing date the _____ day of _____ one thousand nine hundred and _____ (*or as by their written agreement bearing date, etc.*) more fully appears.

Now, therefore, know ye, That we _____, the arbitrators mentioned in the said bonds, having been first duly sworn according to law, and having heard the proofs and allegations of the parties, and examined the matters in controversy by them submitted, do make this award in writing, that is to say the said _____ (*here follows the award.*)

In Witness Whereof, We have hereunto subscribed these presents, this _____ day of _____ one thousand nine hundred and _____.

(Signatures.)

In Presence of

CHAPTER XX.

BAILMENT.

BAILMENT is a delivery of personal property by one person to another to be held for some special object or purpose, and to be returned when that purpose is accomplished. The person delivering the property is called the bailor; the one receiving it, the bailee.

Bailments may be divided into three classes; those which are for the benefit of the bailor or some one whom he represents; those which are for the benefit of the bailee or some person whom he represents; and those which are for the benefit of both the bailor and bailee. In the first class, the bailee is required to exercise only the slightest care and is responsible only for gross negligence. In the second class, he is required to exercise the greatest care and is liable for the slightest neglect. In the third class, he is required to exercise only ordinary care and is responsible only for ordinary neglect. What is or is not proper care in any given case depends largely upon the character of the property and other attendant circumstances; what would be ordinary care in the case of a barrel of flour might be gross negligence in the case of a valuable jewel or picture.

Where a person undertakes to keep another's goods without pay, if he acts in good faith and looks after the property as if it were his own, he is not responsible for the loss or injury of the goods, and is liable only for bad faith or gross negligence. But, of course, this arrangement can be varied by agreement or by circumstances. And if some service is to be rendered by the bailee implying peculiar care or skill on his part, as where a watchmaker undertakes gratuitously the repair of a watch, he is responsible if he does not exercise the ordinary degree of care and skill required for that purpose.

On the other hand, a man who borrows goods is responsible for the slightest negligence resulting in injury or loss. Should he use the property he borrowed for any different purpose than that for which it was lent, or permit another person to use it or keep it beyond the time limited, then he is liable for anything

that may happen to the property. And he cannot keep the property as a set-off to a claim against the bailor.

Common carriers, commission merchants, warehousemen and pledgees are examples of bailees of the third class. In all bailments of this kind the benefits are reciprocal. The contract is advantageous to both parties, and they stand on an equal footing. The bailee therefore is responsible only for the exercise of ordinary care and diligence. See "Common Carriers," Chap. XXI. Inn-keepers also are bailees, but their responsibilities are governed by special rules. See Chap. XXII. As to Pledges, see Chap. XXXIII.

Included in this class, also, are contracts of hiring, as for example, the hiring of a horse or of furniture. Here the hirer is responsible only for ordinary care—that is, such care as the owner has a right to expect a man of ordinary capacity and caution would take of the same thing if it were his own, and under the same circumstances. But on the other hand, there is an implied obligation on his part to use the thing only for the purpose and in the manner for which it was hired. And if he uses it in a different way, or for a longer time, it is held that he may be responsible for a loss thence occurring, although by inevitable accident.

Where mechanics or operatives are employed to make up materials furnished, or to alter or repair a specific thing, the contract is one of mutual benefit, and only ordinary care is required; but what is ordinary care depends largely on the nature and value of the materials and the character of the work. The obligations of the workman are to do the work in a proper manner, and at the time agreed upon, or in a reasonable time, if none be specified, to employ the materials furnished in the right way, and to use his best endeavors to protect the thing delivered to him against all peril or injury. If by deviation from his instructions, or want of care or skill, his work is of no use, he can claim no compensation. If the article is still of some use and be received by the employer, he may claim a proportionate part of his compensation, but his claim is open to set-off for damages sustained by the employer. But if the variation is important, and the materials have been so used as to have lost their value as such, the employer may abandon them to the workman, and recover of him their value. For example, if a customer

delivers to a tailor cloth to be made into a coat, and the coat is not made in accordance with the customer's instructions, or does not fit him, he may abandon it to the tailor, and sue him for the value of the cloth.

In all cases of bailment the general title to the property bailed remains in the bailor, but the bailee has a right to the possession of it as against every one else, and may sue any third person who interferes with his possession. He may even sue the owner if the latter has wrongfully taken the goods from him, as for instance if a pledger has taken possession of the property pledged without paying his debt.

When the purpose of the bailment has been accomplished, the bailee must return the goods to the bailor or to his duly authorized agent.

Where the bailment has been made by several persons jointly, he cannot return the property to one without the consent of the others. As a general rule he cannot dispute the bailor's title. If, however, the bailor is not the owner, and the real owner demands the property, the bailee must surrender it to the latter, notwithstanding the bailment, and he may have to decide at his peril who the real owner is; but if he has restored it to the bailor before receiving notice of the owner's title, he is not responsible to the latter.

A bailee who has received property or materials to be repaired or manufactured, has a lien upon the property for his service; so have inn-keepers, common carriers, and warehousemen for their charges, but if the bailee parts with the possession of the property the lien is lost. The extent of these liens and the manner of enforcing them by sale or otherwise is regulated by statutes in most of the States.

CHAPTER XXI.

THE CARRIAGE OF GOODS AND PASSENGERS.

SECTION I.

A PRIVATE CARRIER.

ONE who carries goods for another is either a private carrier or a common carrier.

A private carrier is one who carries for others once, or sometimes, but who does not pursue the business of carrying as his usual and professed occupation. The contract between him and the owner of the goods which he carries is one of service, and is governed by the ordinary rules of law. Each party is bound to perform his share of the contract. Such a carrier must receive, care for, carry, and deliver the goods, in such wise as he bargains to do.

If he carries the goods for hire, whether actually paid or due, he is bound to use ordinary diligence and care; by which the law means such care as a man of ordinary capacity would take of his own property under similar circumstances. If any loss or injury occur to the goods while in his charge, from the want of such care or diligence on his part, he is responsible. But if the loss be chargeable as much to the fault of the owner as of the carrier, he is not liable. The owner must show the want of care or diligence on the part of the private carrier, to make him liable; but slight evidence tending that way would suffice to throw upon him the burden of accounting satisfactorily for the loss. And if there is such negligence on the part of the carrier, or of a servant for whom he is responsible, the carrier is liable, although the loss be caused primarily by a defect in the thing carried.

If he carries the goods without any compensation, paid or promised, he is in the language of the law, a gratuitous bailee, or mandatory: he is now bound only to slight care; which is such care as every person, not insane or fatuous, would take of his own property. For the want of this care, which would be

gross negligence, he is responsible, but not for ordinary negligence.

We sum up what may be said of the private carrier in the remark, that the general rules which regulate contracts and mutual obligations apply to the duties and the rights of a *private carrier*, with little or no qualification. But it is otherwise with a *common carrier*.

SECTION II.

THE COMMON CARRIER.

THE law in relation to the rights, the duties, and the responsibilities of a common carrier is quite peculiar. The reasons for it are discernible, but it rests mainly upon established usage and custom. And, as these usages have changed considerably in modern times, this law has undergone important modifications.

He is a *common carrier* "who undertakes, for hire, to transport the goods of such as choose to employ him from some known and definite place or places to other known and definite place or places." He is one who undertakes the carriage of goods *as a business*; and it is mainly this which distinguishes him from the private carrier.

The rights and responsibilities of the common carrier may be briefly stated thus: He is bound to take the goods of all who offer, if he be a carrier of goods, and the persons of all who offer, if he be a carrier of passengers; and to take due care and make due transport and delivery of them. He has a lien on the goods which he carries, and on the baggage of passengers, for his compensation. He is liable for all loss or injury to the goods under his charge, although wholly free from negligence, unless the loss happens from the act of God, or from the public enemy. These three rules will be considered in the next section.

The important thing to be remembered is, that a *private carrier* is not liable for injury to persons, or loss of or injury to goods, without fault or negligence on his part; but a *common carrier* is liable, without any fault or negligence on his part.

Truckmen or draymen, porters, and others who undertake the carriage of goods for all applicants from one city or town to another, or from one part of a city to another, are chargeable

as common carriers. So, proprietors of stage-coaches are chargeable as common carriers of passengers, and of the baggage of passengers; or the baggage of others, if they so advertise themselves. So are hackney-coachmen within their accustomed range.

If drivers of stages, or omnibuses, commonly carry and receive pay for goods or parcels which are not the baggage of passengers, and are held out or advertised, or generally known, as so carrying them, they are common carriers of goods, and the proprietors are liable for the loss of such parcels, although neither they nor the drivers were in fault. But if there is no such habit or usage, and the driver receives such a parcel to be carried somewhere, and is paid for it, the driver carries it as a private carrier, and not as a common carrier, and is chargeable only for negligence or fault. And if a line of carriages is established for passengers, and the driver does not account for what is paid him for occasional parcels, but takes it as his own perquisite, the proprietors are not answerable even for the driver's fault or negligence, unless circumstances in some way bring the fault home to them.

In this country, in recent times, the business of carrying goods and passengers is almost monopolized by what are called expressmen, by railroads, or by lines of steam-packets along our coasts, or upon our navigable streams or lakes. All these are undoubtedly common carriers; and although their peculiar method of carrying on this business is new, and will require from us especial consideration in another chapter, there can be no doubt of their being, to all intents and purposes, common carriers.

Ordinary sailing vessels are sometimes said to be common carriers. We should be disposed to restrict this term, however, to regular packets; or, at most, to call by this name general freighting ships. It is not, however, necessary to consider this question, as water-borne goods are now almost always carried under bills of lading, which determine the relations and respective rights of the parties; and these we shall consider in our chapter on the Law of Shipping.

The boatmen on our rivers and canals are common carriers, and ferrymen are common carriers of passengers by their office, and may become common carriers of goods by taking up that

business. A steamboat usually employed as a carrier may do something else, as tow a vessel out of a harbor, or the like; and the character of common carrier does not attach to this special employment, and carry with it its severe liabilities. Therefore, for a loss occurring to a ship in her charge while so employed, the owner of the steamer is not liable without negligence on his part, or on the part of those whom he employs.

The same person may be a common carrier, and also hold other offices or relations. He may be a warehouseman, a wharfinger, or a forwarding merchant. The peculiar liabilities of the common carrier do not attach to either of these offices or employments. Thus, a warehouseman is liable for the loss of the goods which he takes for storage, only in case of his own negligence; he is not, as a common carrier is said to be, an insurer of the goods. The question then arises, when the liability of such a person is that of a warehouseman, and when it is that of a carrier.

If a carrier receives goods to be stored until he can carry them,—a canal-boatman, for example,—or if, at the end of the journey, he stores them for a time for the safety of the goods or the convenience of the owner, while thus stored he is liable only as a warehouseman. But if he puts them into his store or office only for a short time, and for his own convenience, either at the beginning or end of the transit (or journey), they are in his hands as carrier.

Where these relations seem to unite and mingle in one person, it may be said to be the general rule, that, wherever the deposit, in whatever place or building, is secondary and subordinate to the carriage of the goods, which is, therefore, the chief thing, the party taking the goods is a carrier; and otherwise a depositary only of some kind. If, therefore, goods are delivered to a carrier, or at his depot or receiving-room, with directions not to carry them until further orders, he is only a depositary, and not a carrier, until those orders are received; but when they are received he becomes a carrier; and if the goods are afterwards lost or injured before their removal, he is liable as a common carrier without negligence or fault on his part.

SECTION III.

THE OBLIGATION OF THE COMMON CARRIER TO RECEIVE AND CARRY
GOODS OR PASSENGERS.

HE cannot refuse to receive and carry goods offered, without good cause; for, by his openly announcing himself in any way as engaged in this business, he makes an offer to the public which becomes a kind of contract as to any one who accepts it. He may demand his compensation, however, and, if it be refused, he may refuse to carry the goods; nor is he bound to carry them if security be offered to him, but not the money. But if the freight money be not demanded, the owner of the goods, if he is able, ready, and willing to pay it, has all his rights although he does not make a formal tender of the money. A carrier may refuse if his means of carriage are already fully employed. But, in a case where a railway company, being common carriers had issued excursion-tickets for a journey, it was held that they were not excused from carrying passengers according to their contract, upon the ground that there was no room for them in their conveyance; and that, in order to avail themselves of this answer, they should make their contract conditional upon there being room. If the common carrier cannot carry the goods without danger to them, or to himself or other goods, or without extraordinary inconvenience, or if they are not such goods as it is his regular business to carry, he is excused for not carrying them. He is always entitled to his usual charge, but not to extraordinary compensation, unless for extraordinary service.

The common carrier of goods is bound to receive them in a suitable way, and at suitable times and places. If he has an office or station, he must have proper persons there, and proper means of security. During the transit, and at all stopping places, due care must be taken of all goods, and that means the kind and measure of care appropriate for goods of that description. If he have notice, by writing on the article or otherwise, of the need of peculiar care,—as, “Glass, with great care,” or “This side uppermost,” or “To be kept dry,”—he is bound to comply with such directions, supposing them not to impose unnecessary care or labor.

If he carry passengers he must receive all who offer, unless he has some special and sufficient reason for refusing.

In a case tried before the Supreme Judicial Court of Massachusetts, it was held that if an inn-keeper, who has frequently entered a railroad depot and annoyed passengers by soliciting them to go to his inn, receives notice from the superintendent of the depot that he must do so no more, and he nevertheless repeatedly enters the depot for the same purpose, and afterwards obtains a ticket for a passage in the cars, with an actual intention of entering the cars as a passenger, and goes into the depot on his way to the cars, and the superintendent, believing that he has entered the depot to solicit passengers, orders him to go out, and he does not exhibit his ticket, nor give notice of his real intention, but presses forward towards the cars, and the superintendent and his assistants therefore forcibly remove him from the depot, using no more force than is necessary for that purpose, such removal is justifiable, and not an indictable assault and battery..

A common carrier is bound to carry his passengers over the whole route, and at a proper speed, or supply proper means of transport; to demand only a reasonable or usual compensation; to notify his passengers of any peculiar dangers; to treat all alike, unless there be actual and sufficient reason for the distinction, as in the filthy appearance, dangerous condition, or misconduct of a passenger; and to behave to all with civility and decorum.

If a passenger on a railroad or street car refuses to pay his fare, or to conform to the reasonable regulations of the company, or is intoxicated or disorderly, he may be removed from the car. But in making such removal the conductor or other agent of the company must use no more force than is necessary for that purpose, and must not disregard the safety of the passenger. Where, for example, a man helpless by reason of intoxication was ejected between stations on an excessively cold night, the railroad company was held liable for his death from exposure.

He must also have proper carriages, and keep them in good condition, and not overload them; and suitable horses and drivers; stop at the usual places, with proper intervals for rest or food; take the proper route; and drive at proper speed; and

leave the passengers at the usual stopping-places, or wherever he agrees to. In none of these things can he depart from what is usual and proper at his own pleasure. And if by any breach of these duties a passenger is injured, the carrier is responsible. So if he puts his passengers in peril, and one of them be hurt by an effort to escape, as in jumping off, it is no defense for the carrier to show that he would have been safe if he had remained.

In one case it was held that a common carrier who had received a pickpocket as a passenger on board his vessel, and taken his fare, could not put him on shore so long as he was not guilty of any impropriety. But this may be doubted. The common carrier must certainly employ competent and well-behaved persons for all duties, and for failure in any of the particulars of his duties and obligations, he is responsible not only to the extent of any damage caused thereby, but also, in many cases, for pain and injury to the feelings. He is also bound to deliver to each passenger all his baggage at the end of his journey, and is held liable if he delivers it to a wrong party on a forged order, and without personal default.

Lastly, he must make due delivery of the goods at the proper time, in the proper way, and at the proper place and to the proper person; and this person should be some one who was authorized by the owner or sender to receive the goods.

If a party authorized to receive the goods refuse, or is unable to do so, the carrier must keep them for the owner, and with due care; but now under the liability of a warehouseman, and not of a carrier; that is, he is now liable only for fault of some kind.

So the carrier must keep the goods for the owner, if he has good reason to believe that the consignee is dishonest, and will defraud the owner of his property. As to the time when goods should be delivered, it must be within the proper hours for business, when they can be suitably stored; or if the goods are delivered to the sender himself, or at his house, then at some suitable and convenient hour.

There must be no unnecessary delay, and the goods must be delivered as soon after a detention as may be with due diligence.

As to the way and the place at which the goods should be delivered, much must depend upon the nature of the goods,

and much also upon the usage in regard to them, if such usage exists.

The goods should be so left, and with such notice, as to secure the early, convenient, and safe reception of them by the person entitled to have them. Something also must depend, on this point, on the mode of conveyance. A man may carry a parcel into the house and deliver it to the owner or his servant; a wagon or cart can go to the gate, or into the yard, and there deliver what it carries. A vessel can go to one wharf or another, and is bound to go to that which is reasonably convenient to the consignee, or to one that was agreed upon; but a vessel is not always bound to comply with requirements of the consignee as to the very wharf the goods should be left at, but may leave the goods at any safe, convenient, and accessible wharf at which such goods are usually left.

Where the goods are not delivered to the owner personally, or to his agent, immediate notice should be given to the owner. The carrier is generally obliged to give notice of the delivery of goods, and if the owner has in any way designated how the goods may be delivered to himself, he is bound to obey this direction. The notice must be prompt and distinct. And if the goods are delivered at an unsuitable or unauthorized place, no notice will make this a good delivery.

Railroads terminate at their station, and although goods might be sent by wagons to the house or store of consignees, this is not usually done, as it is considered that the railroad carrier has finished his transit at his own terminus. Usually, the consignee of goods sent by railroad has notice from the consignor when to expect them; and this is so common, that it is seldom necessary, in fact, for the agents of the railroad to give notice to the consignee. But this should be given where it is necessary; and should be given as promptly, directly, and specifically as may be necessary for the purpose of the notice.

A railroad company may be compared to owners of ships in this respect, that neither can take the cars or the ships farther than the station or the wharf, and therefore may deliver the goods there. But a carrier by water is bound to give notice that the goods are on the wharf, and is not exonerated as carrier until he gives such notice; whereas, a railroad company is not bound to give notice.

It may happen that some third party may claim the goods under a title adverse to that of the consignor or consignee. If the carrier refuse to deliver them to this third party, and it turns out that the claimant had a legal right to demand them, the carrier would be liable in damages to him. But the carrier may and should demand full and clear evidence of claimant's title; and if the evidence be not satisfactory, he may demand security and indemnity. If the evidence or the indemnity be withheld, he certainly should not be held answerable for anything beyond that amount which the goods themselves would satisfy, for he is in no fault. If he delivers the goods to such claimant, proof that the claimant had good title is an adequate defense against any suit by the consignor or consignee for non-delivery.

SECTION IV.

THE LIEN OF THE COMMON CARRIER.

THE legal meaning of this word, as we have said before, when we have had occasion to use the word in preceding chapters, is the right of holding or detaining property until some charge against it, or some claim upon the owner on account of it, is satisfied.

The common carrier has the right against all the goods he carries, for his compensation. While he holds them for this purpose, he is not liable for loss or injury to them as a common carrier; that is, not unless the injury happen from his own fault.

He may not only hold the goods for his compensation, but may recover this out of them, by any of the usual means in which a lien upon personal chattels is made productive. That is, he holds them just as if they were pledged to him by the owner as a security for the debt. Therefore, if the debt be not paid in a reasonable time after it is due and demanded, the carrier may have a decree of a court of equity for their sale; or may sell them himself at auction, retaining his pay from the proceeds, and paying over the remainder. But to make this course justifiable and safe, the carrier must wait a reasonable time, and give full notice of his intention, so that the owner may have a convenient opportunity to redeem the goods; and

there must be proper advertisement of the sale, and every usual precaution taken to insure a favorable sale; and the carrier must not himself buy the goods, and must act in all respects with entire honesty.

SECTION V.

THE LIABILITY OF THE COMMON CARRIER.

THIS is perfectly well established as a rule of law, although it is very exceptional and peculiar. It is sometimes said to arise from the public carrier being a kind of public officer. But the true reason is the confidence which is necessarily reposed in him, the power he has over the goods intrusted to him, the ease with which he may defraud the owner of them, and yet make it appear that he was not in fault, and the difficulty which the owner might have in making out proof of his default. This reason it is important to remember, because it helps us to construe and apply the rules of law on this subject. Thus, the rule is that the common carrier is liable for any loss or injury to goods under his charge, unless it be caused by the act of God, or by the public enemy. The rule is intended to hold the common carrier responsible wherever it was *possible* that he caused the loss, either by negligence or design.

Hence, the act of God means some act in which neither the carrier himself, nor any other man, had any direct and immediate agency. If, for example, a house in which the goods are at night is struck by lightning, or blown over by a tempest, or washed away by inundation, the carrier is not liable. This is an act of God, although man's agency interferes in causing the loss; for without that agency, the goods would not have been there. But no man could have directly caused the loss. On the other hand, if the building was set on fire by an incendiary at midnight, and the rapid spread of the flames made it absolutely impossible to rescue the goods, this might be an inevitable accident if the carrier were wholly innocent, but it would also be possible that the incendiary was in collusion with the carrier for the purpose of concealing his theft; and therefore the carrier would be liable for such a loss, however innocent.

As a general rule, the common carrier is always liable for loss by fire, unless it is caused by lightning, an accidental fire

not being considered an act of God, or a peril of the sea; and this rule has been applied to steamboats and other vessels. But the statutes of the United States now provide that no owner of a vessel shall be liable for any loss by fire, unless the fire is caused by the design or neglect of such owner. So, it may be true that after the lightning, the tempest, or inundation, the carrier was negligent, and so lost the goods which might have been saved by proper efforts, or that he took the opportunity to steal them. If this could be shown, the carrier would, of course, be liable; but the law will not suppose this without proof, if the first and main cause were such that the carrier *could not* have been guilty in respect to it. So, a common carrier would be liable for a loss caused by a robbery, however sudden, unexpected, and irresistible, or by a theft, however wise and full his precautions, and however subtle and ingenious the theft, although either of these might seem to be unavoidable by any means of safety which it would be at all reasonable to require.

The liability of vessel owners as common carriers has been considerably limited by statute. Thus it is provided by a statute of the United States, that if the owner exercise due diligence to make the vessel seaworthy and properly manned, equipped and supplied, neither the vessel nor her owners, agent or charterers shall be held responsible for damage or loss resulting from faults or errors of navigation, or in the management of the vessel, or for losses arising from dangers of the sea, or other navigable waters, acts of God or public enemies, or from saving or attempting to save life or property at sea, or from any deviation to render such service.

And the liability of the owner of any vessel for any embezzlement, loss or injury to any goods shipped on board, occasioned without the privity or knowledge of such owner, is further limited by statute to the amount or value of the interest of such owner in the vessel and the freight then pending.

The general principles of agency extend to common carriers, and make them liable for the acts of their agents, done while in the discharge of the agency or employment. So, the knowledge of his agent is the knowledge of the carrier, if the agent be authorized expressly, or by the nature of his employment, to receive this notice or knowledge. But an agent for a common carrier may act for himself,—as a stage-coachman in carrying

parcels, for which he is paid personally and does not account with his employer,—and then the employer, as we have said, is not liable, unless the owner of the goods believed the stage-coachman carried the goods for his employer, and was justified by the facts and apparent circumstances in so believing.

A carrier may be liable beyond his own route. It is very common for carriers, who share between them the parts of a long route, to unite in the business and the profits, and then all are liable for a loss on any part of the route.

If they are not so united in fact, but say they are so, or say what indicates that they are so, they justify a sender in supposing they are united, and then they are equally liable.

If a carrier takes goods to carry only as far as he goes, and then engages to send them forward by another carrier, he is liable as carrier to the end of his own route; he is liable also if he neglects to send the goods on; but he is not liable for what may happen to them afterwards. Such has been the general rule in this country as applied to shipments of goods on connecting lines of railroads; and the same rule has been applied to a passenger's baggage where the passage was over several connecting roads. It is now, however, provided in the Interstate Commerce Act that when property is delivered to a carrier for transportation to a point in another State, that carrier shall be responsible to the holder of the bill of lading, and that no contract, receipt, etc., shall exempt it from such liability.

SECTION VI.

THE CARRIER OF PASSENGERS.

THE carriers of passengers are under a more limited liability than the carriers of goods. This is now well settled. The reason is, that they have not the same control over passengers as over goods; cannot fasten them down, and use other means of securing them. But while the liability of the carrier of passengers is thus mitigated, it is still stringent and extreme. No proof of care will excuse the carrier if he loses goods committed to him. But only proof of *the utmost care* will excuse him for injury done to passengers; for the carrier of passengers is liable for injury to them, unless he can show that he took all possible care,

—giving always a reasonable construction to this phrase. And in the case of railroad companies there is authority for using the words in almost their literal meaning; that is, for holding them liable for all injury to passengers which could have been *possibly* avoided.

SECTION VII.

NOTICE BY THE CARRIER, RESTRICTING HIS LIABILITY.

THE common carrier has a right to make a special agreement with the senders of goods, which shall materially modify, or even wholly prevent, his liability for accidental loss or injury to the goods.

The question is, What constitutes such a bargain? A mere notice that the carrier is not responsible, or his refusal to be responsible, although brought home to the knowledge of the other party, does not necessarily constitute an agreement. The reason is this. The sender has a right to insist upon sending his goods, and the passenger has a right to insist upon going himself with customary baggage, leaving the carrier to his legal responsibility; and the carrier is bound to take them on these terms. If, therefore, the sender or the passenger, after receiving such notice, only sends or goes in silence, and without expressing any assent, especially if the notice be given at such time, or under such circumstances, as would make it inconvenient for the sender not to send, or for the passenger not to go, then the law will not presume from his sending or going an assent to the carrier's terms.

Such assent may be expressed by words, or made manifest by acts; and it is in each case a question of evidence for the jury whether there was such an agreement.

But a notice by the carrier, which only limits and defines his liability to a reasonable extent, without taking it away, as one which states what kind of goods he will carry, and what he will not; or to what amount only he will be liable for passengers' baggage, without special notice; or what information he will require, if certain articles, as jewels or gold, are carried; or what increased rates must be paid for such things,—any notice of this kind, if in itself reasonable and just, will bind the party receiving it.

No party will be affected by any notice,—neither the carrier, nor a sender of goods, nor a passenger,—unless a knowledge of it can be brought home to him. In a case in Pennsylvania, where the notice was in the English language, and the passenger was a German, who did not understand English, it was held that the carrier must prove that the passenger had actual knowledge of the limitation in the notice. But in a recent case in Massachusetts it was held, under a similar state of facts, that the passenger was bound to ascertain the meaning of the notice given him.

Such knowledge may be brought home to him by indirect evidence; as by showing that it was stated on a receipt given to him, or on a ticket sold him, or in a newspaper which he read, or even that it was a matter of usage, and generally known. This question is one of fact, which the jury will determine upon all the evidence, under the direction of the court. And if the notice is ambiguous, they will be directed to give it the meaning which is against the carrier, because it was his business to make it plain and certain.

The bills of lading and receipts given by most railroad and express companies declare on their face that they are given subject to the rules and conditions printed upon the back thereof. Such a paper given by the company and accepted by the shipper constitutes a contract between them.

Any fraud towards the carrier, as a fraudulent disregard of a notice, or an effort to cast on him a responsibility he is not obliged to assume, or to make his liability seem to be greater than it really is, will extinguish the liability of the carrier so far as it is affected by such a fraud.

If a carrier gives notice which he is authorized to give, the party receiving it is bound by it, and the carrier is under no obligation to make a special inquiry or investigation to see that the notice is complied with, but may assume that this is done.

It should, however, be remarked that such notice affects the liability of the common carrier only so far as that liability is peculiar to him as such—that is, his liability for a loss which occurs without his agency or fault; for he is just as liable as he would be without any notice, for a loss or injury caused by his own negligence or default, or that of his servants.

Perhaps a common carrier might make a valid bargain which would protect him against everything but his own wilful or fraudulent misconduct. But no bargain could be made to protect him against this.

In England common carriers are allowed to exempt themselves from the consequences of the negligence or misconduct of their servants and agents, and such is also the law in New York. Elsewhere in this country notices claiming such exemption are universally held to be contrary to public policy and void.

And the statutes of the United States relating to vessels expressly prohibit the insertion in any bill of lading, of any clause relieving the vessel or owners from liability "for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care or proper delivery of any and all lawful merchandise or property committed to its or their charge."

SECTION VIII.

THE CARRIER'S LIABILITY FOR GOODS CARRIED BY PASSENGERS.

A CARRIER of goods knows what goods, or rather what parcels and packages, he receives and is responsible for. A carrier of passengers is responsible for the goods they carry with them as baggage; what that is, the carrier does not always know; and he is responsible only to the extent of what might be fairly and naturally carried as baggage. This must always be a question of fact, to be settled as such by the jury, upon all the evidence, and under the direction of the court. But there can be no precise and definite standard. A traveler on a long journey needs more money and more baggage than on a short one; one going to some places and for some purposes needs more than one going to other places or for other purposes.

Thus in New York it was decided that *baggage* does not properly include money in a trunk, or any articles usually carried about the person. And in another New York case, it was held that, where the baggage of a passenger consists of an ordinary traveling trunk, in which there is a large sum of money, such money is not considered as included under the term *baggage*, so as to render the carrier responsible for it. But generally a passenger may carry as baggage, money, not

exceeding an amount ordinarily carried for traveling-expenses. So in Massachusetts it was held that common carriers are responsible for money *bona fide* included in the baggage of a passenger, for traveling expenses and personal use, to an amount not exceeding what a prudent person would deem proper and necessary for the purpose.

In Pennsylvania, carriers have been held responsible for ladies' trunks containing apparel and jewels. And in Illinois, a common carrier of passengers has been held liable for the loss of a pocket-pistol and a pair of dueling-pistols, contained in the carpet-bag of a passenger, which was stolen out of the possession of the carrier. But in Tennessee, it has been held that "a silver watch, worth about thirty-five dollars, also medicines, handcuffs, locks, &c., worth about twenty dollars," were not included in the term baggage, and that the carrier was not responsible for their loss. In Ohio, it has been held that a gold watch, of the value of ninety-five dollars, was a part of the traveler's baggage, and his trunk a proper place to carry it in. In another New York case, it has been held that the owners of steamboats were liable as common carriers for the baggage of passengers; but, to subject them to damages for loss thereof, it must be strictly baggage; that is, such articles of necessity and personal convenience as are usually carried by travelers. And it was accordingly held, in that case, that the carrier was not liable for the loss of a trunk containing valuable merchandise and nothing else, although it did not appear that the plaintiff had any other trunk with him. But in a case in Pennsylvania, where the plaintiff was a carpenter moving to the State of Ohio, and his trunk contained carpenters' tools to the value of fifty-five dollars, which the jury found to be the reasonable tools of a carpenter, it was held that he was entitled to recover for them as baggage.

There is some diversity, and perhaps some uncertainty, in the application of the rule; but the rule itself is well settled, and a reasonable construction and application of it must always be made; and, for this purpose, the passenger himself, and all the circumstances of the case, must be considered.

The purpose of the rule is to prevent the carrier from becoming liable by the fraud of the passenger, or by conduct which would have the effect of fraud; for this would be the

case if a passenger should carry merchandise by way of baggage, and thus make the carrier of passengers a carrier of goods without knowing it and without being paid for it.

Generally, a common carrier of passengers, by stage, packet, steamer, or cars, carries the moderate and reasonable baggage of a passenger, without being paid specifically for it. But the law considers a payment for this so far included in the payment of the fare, as to form a sufficient ground for the carrier's liability to the extent above stated.

The carrier is only liable for the goods or baggage delivered to him and placed under his care. Hence, if a sender of goods send his own servant with them, and intrust them to him and not to the carrier, the carrier is not responsible. So, if a passenger keeps his baggage, or any part of it, on his person, or in his own hands, or within his own sight and immediate control, instead of delivering it to the carrier or his servants, the carrier is not liable, *as carrier*, for any loss or injury which may happen to it; that is, not without actual default in the matter. Thus, in an action brought in New York to charge a railroad company, as common carriers, for the loss of an overcoat belonging to a passenger, it appeared that the coat was not delivered to the defendants, but that the passenger having placed it on the seat of the car in which he sat, forgot to take it with him when he left, and it was afterwards stolen; and it was held that the defendants were not liable. But if the baggage of a passenger is *delivered* to a common carrier, or his servant, he is liable for it in the same way, and to the same extent, as he is for goods which he carries.

In this country the rules of evidence permit the traveler to maintain his action against the carrier by proving, by his own testimony, the contents of a lost trunk or valise, and their value. And the testimony of the wife of the owner is similarly admissible. But the carrier's liability is always limited to such things—in quantity, quality, kind, and value—as might reasonably be supposed to be carried in such a trunk or valise. The rule, with this limitation, seems reasonable and safe, and is quite generally adopted. In Massachusetts it was distinctly denied by the Supreme Court, but was afterwards established by statute.

A sleeping-car company is not liable as a common carrier, or as an inn-holder, but only for negligence. It is its duty to use

reasonable care to guard the passengers from theft, and if through want of such care the personal effects of a passenger, such as he might reasonably carry with him, are stolen, the company is liable.

The common carrier of goods or of passengers is liable to third parties for any injury done to them by the negligence or default of the carrier, or of his servants. And it would seem that he is liable even for the wilful wrong-doing of his servants if it was committed while in his employ, and in the management of the conveyance under his control, although the wrong was done in direct opposition to his express commands. So he is for injury to property by the wayside, caused by his fault. But the negligence of the party suffering the injury, if it was material and contributed to the injury, is a good defense for the carrier unless malice on the carrier's part can be shown.

Where the party injured is in fault, the common carrier has been held liable, if that fault was made possible and injurious through the fault of the carrier. If passengers are carried gratuitously—that is, without pay—the common carrier is still liable for injury caused by his negligence.

The liability of railroads for injury or death of third persons as well as of passengers has been greatly modified by statute. In some States contributory negligence on the part of the person injured is no longer a valid defense.

Whether a railroad company is responsible for fire set to buildings or property along the road, without negligence on its part, has been much considered in this country. In some of our States they are made so liable by statute provision. And this fact, together with the general principles of liability for injury done, would seem to lead to the conclusion that they are not liable, unless in fault, or unless made so by statute.

CHAPTER XXII.

HOTEL KEEPERS, INNKEEPERS, AND BOARDING-HOUSE KEEPERS.

HOTEL KEEPERS and innkeepers are, in law, the same. An inn has been judicially defined as a house where the traveler is provided with everything which he has occasion for while on his way. There need not be a sign to make it an inn. A coffee-house or eating-room is not an inn, nor is a boarding-house.

An innkeeper has a lien upon all the goods of a guest, for the price of his entertainment, or that of his servants and horses. This lien covers the goods brought to him by a guest, though they belong to another person. Thus he has a lien on a stolen horse which the thief brings to him. But he has no lien on the clothes or goods which a guest actually has upon his person.

He must receive every guest who offers, unless his house is full, or there is good reason to believe that the guest will be disorderly. A guest has a right to reasonable accommodations, but not to choose his apartment, or use it for other purposes than those for which it was designated. Public policy imposes upon an innkeeper a severe liability. In strict law, he is an insurer of the property committed to his care, against everything but the act of God, the public enemy, or the fraud or neglect of the guest. But there seems to be of late some disposition in the courts to hold him thus liable only where there has been some kind or measure of negligence on his part.

A boarder at a boarding-house cannot hold the keeper of the house to this liability, nor does the common law give the keeper a lien on the boarder's goods, but such a lien is given by statute in many of the States. It is sometimes difficult to say whether a person in the house is a guest at an inn, or a boarder. From all the cases we infer this distinction: A boarder is one who makes a bargain for a certain time. A guest comes and goes when he likes, paying only for what he receives. Though he stays a long time at an inn or hotel, without any bargain on time, he is still a guest; holding the keeper of the inn to his liability, and having his goods under a lien to the keeper. But if he makes a bargain on time, he becomes a boarder, and the liability and lien of the keeper cease.

It is a good defense by an innkeeper against a guest's claim for a loss, that it was caused by a servant of the owner, or by one who came with him as his companion, or by the owner's own fault. It is also a good defense if the owner retained, personally and exclusively, the custody and care of the goods; but it is not enough to make this defense sufficient, that the owner exercised some choice as to where his goods should be placed, nor that the key of the room was given him. But an innkeeper may require of his guest to place his goods in a particular place, under lock and key; or to give notice to guests that he will not be responsible for money, or especially valuable goods, unless placed in the innkeeper's safe. If such precautions are reasonable, and the guest neglects them, the innkeeper is not liable. Some articles of this kind a guest needs to have within his immediate reach; and such things he need not deposit in the safe, and the innkeeper would be liable if they were lost without the guest's own fault.

The innkeeper is liable for the loss of the goods while fairly in his custody, though not specially delivered to him; as if lost while the innkeeper's servant was carrying them to the inn, or from the inn to the cars, or in a hack in which the innkeeper undertook to carry the guest "free" from a station to his inn.

Some cases hold that the innkeeper is liable for the loss of goods placed in an inn although the owner does not himself lodge or eat there. But other cases, and we think with better reason, hold that the innkeeper is liable only for the goods when the owner comes and stays with them. He is not liable permanently for goods left by a guest who has gone away. He would, however, still be held liable for them for a reasonable time, which, in one case, was said to extend over "some days." For a guest may leave for a reasonable time—which must not be long—with the purpose of return; and while he is absent his goods are under the same responsibility of the innkeeper as if the owner were in the house.

If a horse or carriage is put into a distant barn, or a horse into a pasture, by the innkeeper, without the knowledge or consent of the owner, the innkeeper is liable for their loss.

A boarding-house keeper is liable for loss caused by the negligence of his or her servants, as he or she is for his or her own; but not, like an innkeeper, for a loss without negligence.

CHAPTER XXIII.

LIMITATIONS.

SECTION I.

THE STATUTES OF LIMITATIONS.

ALL of our States have what are called Statutes of Limitations. They are not the same everywhere; but they provide different periods of time within which the actions specified in the statutes must be brought. These periods vary from twenty years to one. Generally, they are longer for real actions, or for actions on judgments or on contracts under seal, and shorter for simple contracts of various kinds. An abstract of these statutory provisions in all the States is given at the close of this chapter.

In most of the States there is a statute which provides, in substance, that, if a debt or promise be once barred by the Statute of Limitations, no acknowledgment of the debt or new promise shall renew the debt, and take away the effect of the statute, unless the new promise is in writing, and is signed by the party who makes the promise. But this statute expressly permits a part-payment either of principal or interest of the old debt to have the same effect as a new promise. And this statute also provides, that if there be joint contractors or debtors, and a plaintiff is barred by the statute against both, but the bar of the statute is removed as to one by a new promise or otherwise, the plaintiff may have judgment against this one, but not against the other.

SECTION II.

CONSTRUCTION OF THE STATUTE.

FOR the law of limitation there is a twofold foundation; in the first place, the actual probability that a debt which has not been claimed for a long time was paid, and that this is the reason of the silence of the creditor. But, besides this reason, there is the inexpediency and injustice of permitting a stale

and neglected claim or debt, even if it has not been paid, to be set up and enforced after a long silence and acquiescence.

Before inquiring into the rules of law which now apply to the case of an acknowledgment or new promise, it should be remarked that a prescription, or limitation, of common law, much more ancient than the statutes above quoted, is still in force. This is the presumption of payment after twenty years, which is applicable to all debts; not only the simple contracts referred to in the Statutes of Limitation—that is, contracts which are merely oral, or which if written have no seal—but to specialties, or contracts or debts under seal or by judgment of court. Of these it will not be necessary to speak here, excepting to remark, that in a few of our States the Statute of Limitations excepts from the general provision relating to simple contracts a promissory note which is signed in the presence of an attesting witness, and is put in suit by the original payee, or his executor or administrator; such a note in those States, as in Maine and Massachusetts, may be sued any time within twenty years after it is due. Bank-bills and other evidences of debt issued by banks, are everywhere excepted from the operation of the statute.

SECTION III.

THE NEW PROMISE.

WHAT is the new promise which suffices to take a case out of the statute? A mere acknowledgment, which does not contain, by any reasonable implication or construction, a new promise, is not sufficient, and still less so if it expressly excludes a new promise. In the leading American case upon this point, before the Supreme Court of the United States, it was proved, in answer to the plea of the Statute of Limitations, that the defendant, one of the partners of a firm then dissolved, said to the plaintiff, "I know we are owing you;" "I am getting old, and I wish to have the business settled:" it was held that these expressions were insufficient to revive the debt. So, in New Hampshire, in an action on a promissory note, the defendant, on being asked to pay the note, said "he guessed the note was outlawed, but that would make no difference, he was willing to pay his honest debts, always." As he did not state in direct

terms that he was willing to pay the note, this was held not sufficient to revive the debt. A new promise is not now implied by the law itself, from a mere acknowledgment.

The new promise need not define the amount of the debt. That can be done by other evidence, if only the existence of the debt and the purpose of paying it are acknowledged. Still, the new promise must be of the specific debt, or must distinctly include it; for if wholly general and undefined, it is not enough. A testator who provides for the payment of his debts, generally, does not thereby make a new promise as to any one of them.

If the new promise is conditional, the party relying upon it must be prepared to show that the condition has been fulfilled. Thus, if the new promise be to pay "when I am able," the promisee must prove not only the promise, but that the promisor is able to pay the debt.

As the acknowledgment should be voluntary, it follows that one made under process of law, as by a bankrupt, or by answers to interrogatories which could not be avoided, should never have the effect of a new promise.

SECTION IV.

PART-PAYMENT.

A PART-PAYMENT of a debt is such a recognition of it as implies a new promise, even if it was made in goods or chattels, if they were offered as payment, and agreed to be received as payment, or by negotiable promissory note or bill. Thus, in a case where one was sued for money due for a quantity of hay, and pleaded that it was barred by limitation, which was a good defense, the plaintiff proved in reply that defendant had given him within the limitation a gallon of gin as part-payment for his debt; and it was held that this took the case out of the Statute of Limitations, and the plaintiff recovered. But a payment has this effect only when the payment is made as of a part of a debt. If it is made in settlement of the whole, of course it is no promise of more. And a bare payment, without words or acts to indicate its character, would not be construed as carrying with it an acknowledgment that more was due and would be paid.

If a debtor owes several debts, and pays a sum of money, he has the right of appropriating that money to one debt or another as he pleases. If he pays it without indicating his own appropriation, the general rule is, that the creditor who receives the money may appropriate it as he will. There is, however, this exception. If there be two or more debts, some of which are barred by the statute, and others are not barred by it, the creditor cannot appropriate the payment to a debt that is barred, for the purpose of taking it out of the statute by such part-payment.

SECTION V.

THE STATUTORY EXCEPTIONS.

As persons may have a right of action without being able to begin the action within the period required by the statutes, because they are disabled by infancy, or by absence from the State, or by unsoundness of mind, or imprisonment, or in some States by being a married woman, it is generally provided in the statutes that the limitations there prescribed do not apply to persons so disabled. The more common of these disabilities, and the most universal in our State laws, are infancy and absence from the State. But these disabilities must exist when the cause of action arises to prevent the statutes of limitation from applying. And after the disabilities are removed, the persons who have been disabled may bring their action within certain periods of time. These periods are stated in the abstract of the Statutes of Limitation at the close of this chapter.

The effect of these is, that the disability must exist when the debt accrued; and then, so long as the disability continues to exist, the statute does not take effect. But it is a general rule, that, if the limitation begins to run, it goes on without any interruption or suspension from any subsequent disability. Thus, if a creditor be of sound mind, or a debtor be at home when the debt accrues, and one month afterwards the creditor becomes insane, or the debtor leaves the country, nevertheless the six years go on, and after the end of that time no action can be commenced for the debt. Or if the disability exists when the debt accrues, and some months afterwards ceases, so that the limitation begins to run when it ceases, and after-

wards the disability comes again, it does not interrupt the limitation.

If, when a debt is due, the debtor is out of the State, the limitation does not begin to run. If afterwards he returns to the State, it then begins to run, and, having begun, it continues to run, in many of the States, although he goes out of the State again, and returns no more. In other States the statutes provides that the time of the debtor's absence from the State is not included in the period of limitation.

In this country, a rational construction has been given to the disability of being out of the State, and its removal; and it is not understood to be terminated merely by a return of the debtor for a few days, if during those days he was not within reach. If, however, the creditor knew that he had returned, or might have known it by the exercise of reasonable care and diligence, soon enough to have profited by it, this removal of the disability brings the statute into operation, although the return was for a short time only.

SECTION VI.

WHEN THE PERIOD OF LIMITATION BEGINS.

It is sometimes a question from what point of time the limitation must be counted. And the general rule is, that it begins when the action might have been commenced. If a credit is given, this period does not begin until the credit has expired. If a note on time be given, the limitation does not begin until the time has expired, including the additional three days' grace; if a bill of exchange be given, payable at sight, then the limitation begins after presentment and demand; but if a note be payable on demand, or money is payable on demand, then the limitation begins at once, because there may be an action at once. If there can be no action until a previous demand, the limitation begins as soon as the demand is made. If money be payable on the happening of any event, then the limitation begins after that event has happened. If several successive credits are given, as if a note is given which is to be renewed; or if a credit is given, and then a note is to be given; or if the credit is longer or shorter, at the purchaser's option, as if it be agreed that a

note shall be given at two or four months,—then the limitation begins when the whole credit or the longer credit has expired.

SECTION VII.

THE STATUTE DOES NOT AFFECT COLLATERAL SECURITY.

It is important to remember that the Statute of Limitations does not avoid or cancel the debt, but only provides that “no action shall be maintained upon it” after a given time. Therefore, it does not follow that no right can be sustained by the debtor, although the debt cannot be sued. Thus, if one who holds a common note of hand on which there is a mortgage or pledge of real or of personal property, without valid excuse neglects to sue the note until after the limitation, he can never bring an action upon that note; but the pledge or mortgage is as valid and effectual as it was before; and, as far as it goes, his debt is secure; and for the purpose of realizing this security, by foreclosing a mortgage, for example, he may have whatever process is necessary, although he cannot sue the note itself. And the debtor cannot redeem the property pledged or mortgaged except by payment of the debt. This, however, has been changed by Statute in some States.

ABSTRACT OF THE STATUTES OF LIMITATIONS.

ALABAMA.

Judgments of courts of record, *twenty years*. Actions to recover real property, contracts or writings under seal, actions against sheriffs, coroners, constables, and other public officers, for malfeasance in office, *ten years*. Trespass to the person or real or personal property, detention or conversion of personal property, all promises and writing not under seal, actions for recovery of loan or on an account stated, actions for the use and occupation of land, actions against sureties of public officers, and sureties of executors, administrators, and guardians, and judgments of justices of the peace, and actions on simple contract or specialty not specifically enumerated, *six years*. Certain actions on equities of redemption in lands sold by decree of court, *five years*. Actions against surety to writ of error, appeal bond, etc., except on those given in courts of the State, *four years*. Actions on open or unliquidated account, to be computed from date of last item, or time when account was due, and certain actions founded on mortgages of personal property, *three years*. Actions by per-

sonal representative for death of testator or intestate, actions for damages for personal injury or death of a minor under statute, *two years*. Malicious prosecutions, criminal conversation, seduction, breach of promise, and libel and slander, actions for statutory penalties, and all other actions for injury to person or rights not arising from contract, *one year*. Persons under disability have three years after the removal of the same in which to sue or defend, but action must be brought within *twenty years*. Period of defendant's absence from the State is not included. Part payment or unconditional promise in writing only will revive cause of action.

ALASKA.

Actions for the recovery of real property, on a sealed instrument, or on a judgment, *ten years*; on contract, or upon a statutory liability, except for a penalty or forfeiture, for waste or trespass upon real property, for taking, detaining or injuring personal property, *six years*; against a marshal, coroner, or constable officially, except for an escape, for statutory penalty or forfeiture, *three years*; for libel, slander, assault, battery, seduction, false imprisonment, injury to person, *two years*; for escape, *one year*. Cause of action upon open, mutual and current account is deemed to have accrued at the date of the last item. Time during which a defendant is absent from the Territory is not a part of the time limited. Persons under a disability must commence suit within *two years* after the removal of the same. Acknowledgment in writing or payment of principal or interest by the party to be charged takes the case out of the statute.

ARIZONA.

Actions to recover real estate in possession of one cultivating or using same, *ten years*; cultivating or using under recorded deed, and paying taxes, *five years*; under title or color of title, *three years*. Action on contract in writing executed within State, *six years*. Domestic judgments, *five years*. On bonds to convey real estate, partnership accounts and accounts between merchant and merchant, judgments rendered without the State, or upon an instrument in writing executed outside the State, actions upon the bond of an administrator, etc., actions for the specific performance of contracts for the conveyance of real estate, and all other actions where no provision made, *four years*. Actions on contracts not in writing and on stated or open accounts, *three years*. Trespass, trover, conversion, injury to property, detention of personal property, actions under employers' liability act, *two years*. Actions for injury to the person, malicious prosecution, false imprisonment, libel, slander, seduction, breach of promise, injury to person resulting in death, *one year*. Limitation is suspended during absence from the State. New acknowledgment or promise must be in writing. Persons under a disability have the same time after the removal thereof.

ARKANSAS.

Actions to recover real property, *seven years*. But persons under legal disabilities may bring their action within *three years* after the removal of such disability. Judgments, *ten years*. Actions on bonds of executors and administrators, *eight years*; on official bonds of sheriffs, coroners, and constables, *four years*. Promissory notes and other instruments in writing,

including those under seal, *five years*. Contracts not in writing, trespass on lands, libels and actions for taking or injuring goods and chattels, *three years*. Actions against sheriffs and coroners except for escape, *two years*. Actions for criminal conversation, assault and battery, false imprisonment, slander, actions against sheriffs for escape, *one year*; all other causes of action, *five years*. Suits on mortgages must be brought before the debt secured thereby is barred. In all cases except actions to recover real property, the limitation in regard to persons under disabilities begins to run from the removal of the same. In actions on an account current, the cause of action accrues from the last item proved in the account. Any new promise must be in writing, and signed by the party to be charged. Actions which survive may be brought by and against executors and administrators within *one year* from the death of the party, or the granting letters testamentary or of administration. Any action failing for any cause not affecting the right of action may be recommended within *one year* after such failure.

CALIFORNIA.

Actions to recover real property or *mesne* profits of same, *five years*. Judgments of courts of record, *five years*. On contracts, obligations, or liabilities founded on an instrument in writing, on book account, account stated, or balance due on mutual open and current account, *four years*. Actions on statute liabilities, other than penalties and forfeitures, trespass on real estate, trover, detinue, and replevin, actions in case of fraud, the time beginning to run from discovery of the same, *three years*. Contracts not in writing, or on abstract or guarantee of the title to real estate, and actions against sheriffs, coroners and constables, for acts done in official capacity, except for escapes, *two years*. Actions for statute penalties or forfeitures or for an undertaking in a criminal action, libel, slander, assault, battery, false imprisonment, seduction, actions against sheriffs and constables for escapes, action against a municipal corporation for damages caused by a mob or riot, actions for personal injury due to the wrongful act or negligence of another, and actions against banks for payment of a forged or raised check, *one year*. Action for property seized by tax collector, or to recover stock sold for illegal assessment, *six months*. All other actions must be commenced within *four years*. There is no limitation to actions against a bank or trust company for the recovery of deposits. In actions on mutual, open, and current accounts, the cause of action is deemed to have accrued from the last item proved on either side. The time of limitation is not to run against persons out of the State. The limitation in case of persons under disabilities at the time of accrual of right begins to run from the removal of the same. New promise to revive action must be in writing.

COLORADO.

Actions for recovery of real property, *twenty years*. In case of actual possession under connected chain of title, *seven years*. Persons under disability are allowed *two years* after removal of disability. Persons in possession under color of title for *seven years* and payment of taxes, or in case of unoccupied land after *seven consecutive years'* payment of taxes, are

deemed owners to extent of paper title. Actions on contracts, express or implied, judgments of courts not of record, rent, waste and trespass on land, taking, detaining, or injuring personal property and assumpsit, *six years*. Actions concerning water rights, *four years*. Actions for injury or death of employee, *two years*. Assault and battery, false imprisonment, slander, libel, actions against sheriffs or coroners, except for escapes, *one year*. Escapes, *six months*. All other personal actions, *three years*. Limitations in case of persons under disabilities begin to run from date of removal of same. When the cause of action accrued out of the State on a contract, judgment, or sealed instrument, action must be brought within *six years* of the time it accrued. If cause of action accrued out of the State more than *six years* before, and was there put in judgment more than *three months* before action brought here, statute may be pleaded in bar if defendant is a *bona fide* resident, and may be pleaded upon any judgment or decree rendered in any court out of the State against a *bona fide* resident of the State upon any debt, contract, or liability barred in this State by Statute of Limitations. Cause of action accruing in another State and barred there, barred here also, except in favor of citizen of this State who held it when it accrued.

CONNECTICUT.

Actions to recover real property, *fifteen years*. But person under legal disabilities may bring such action within *five years* after removal of the disability. Suits on contracts under seal and promissory notes not negotiable, *seventeen years*; and persons under disabilities, within *four years* after removal of the same. Actions on all simple contracts, book debts, debt on simple contract, contracts in writing not under seal, except notes not negotiable, *six years*. Persons under disabilities, *three years* after removal of the same. In cases of settlement of partnership, or joint occupancy of real or personal estate or joint accounts, courts will take into consideration all the joint transactions since the time of the last settlement, though more than *six years* have elapsed since said settlement. Except the cases mentioned above, an action founded on any express contract or agreement not reduced to writing, actions of trespass, or slander, must be brought within *three years*. Actions for damages for loss of life from negligence, *one year* from the date of the negligence complained of. Actions for damage to person or property caused by negligence of municipality, railway, or street railway company may be brought within *one year*; provided that no such action may be brought against a tramway or railroad company unless proper notice of the injury is given within four months of date of injury. Any action properly begun, and failing for a cause not affecting the right of action, may be recommenced within *one year* after such failure, except actions against executors and administrators, which may be begun again within *six months*. When cause of action is fraudulently concealed, the limitation shall begin to run from discovery of the right of action by the person entitled.

DELAWARE.

Real actions, actions on sealed instruments and judgments, *twenty years*; but persons under disabilities may bring a real action within *ten years* from removal of the same. On official bonds of sheriffs, executors, and administrators, and actions on promissory notes, bills, and acknowledgments in writing, *six years*. On guardian's bonds, *three years* from determination of guardianship. Trespass, replevin, detinue, debt other than specialty, account, assumpsit, and case, *three years*. Personal injury, *one year*. Time of defendant's absence from the State is not included. In mutual and running accounts, the limitation does not begin to run while the account is open. Persons under disabilities may begin personal actions within *three years* after removal of disability.

DISTRICT OF COLUMBIA.

Real actions, *fifteen years*. Actions on executors' or administrators' bonds, *five years*. On other bonds, covenants or other sealed instruments, *twelve years*. On simple contract, express or implied, injury to real or personal property, recovery of personal property or damages for detention, *three years*. Statutory penalty on forfeiture, libel, slander, assault, battery, mayhem, wounding, malicious prosecution, false arrest or imprisonment, *one year*. Actions not specially prescribed, *three years*. Persons under disability some times after removal, but in real actions, and actions in specialties, *five years*. Time of absence from District not included.

FLORIDA.

Real actions against person claiming under color of title or adverse possession, *seven years*. Domestic judgments, and writings under seal, *twenty years*. Foreign judgments, *seven years*. Writings not under seal, *five years*. Statute liabilities other than penalties and forfeitures, trespass on real property, taking, detaining or injuring personal property, replevin, and contracts not in writing, including open accounts for goods, wares, and merchandise, action for relief on ground of fraud, *three years*. Statute penalties and forfeitures, libel, slander, assault, battery, false imprisonment, *two years*. Action for causes other than those above-mentioned, *four years*. In actions to recover a balance due on mutual, open, and current accounts, the cause of action is deemed to have accrued from the date of the last item proved on either side. New promise must be in writing.

GEORGIA.

Actions to recover real property, *twenty years*; but if defendant claim under written evidence of title, *seven years*; foreign judgments, *five years*; domestic judgment, *seven years*. Sealed instruments, and actions to enforce rights accruing under statutes, acts of incorporation or by operation of law, *twenty years*. Suit against executors, etc., except on their bonds, *ten years*. Contracts in writing, including bills and notes, *six years*. Open accounts and contracts not in writing, trespass on realty, or personalty, *four years*. Injuries to person, *two years*. Libel and slander, *one year*. Limitations in case of persons under disabilities begin to run from the removal of the same. Any new promise must be in writing. The time of limitation is not to run in favor of persons out of the State.

HAWAII.

Judgments of courts of record, *twenty years*. Real actions, *ten years*. Persons under twenty, insane or imprisoned, and those claiming under them, *five years* from removal of disability. Actions for debt founded on contract, except judgments of courts of record, judgments of courts not of record, actions for arrearages of rent, trespass on land, taking or detaining goods or chattels, replevin, actions on the case for criminal conversation, libel or other injury to rights except as otherwise provided, *six years*. Assault and battery, false imprisonment, slander of character or title, special damages for words spoken, and actions against sheriffs or other officers, *two years*. Actions for injury to person or property, *one year*. Actions for debt on contract or liability arising in any foreign country, except judgment, *four years* after cause of action accrued. Cause of action arising in foreign country and barred there is barred here, except in favor of domiciled resident who has held cause of action from the time it accrued. As to persons under disability, limitation begins from removal of same. Time of defendant's absence from the Territory is not included.

IDAHO.

Judgments and actions for *mesne profits* of real estate, *six years*. Suits for possession of realty and contracts, in writing, *five years*; those not in writing, *four years*. Statute liabilities other than penalties and forfeitures, trespass on real estate, taking, detaining, or injuring goods and chattels, and actions for relief on the ground of fraud or mistake, *three years*. Actions against officers for seizing, detaining, or injuring property, actions for penalty or forfeiture, on a statute or undertaking in a criminal case, to recover damages for death, for libel, slander, assault and battery, false imprisonment, seduction, or escape, *two years*. A cause of action barred in the State or Territory where it arose is barred here.

ILLINOIS.

Actions to recover real property, and judgments of a domestic court of record, *twenty years*; but *seven year's* residence with connected record title, or *seven year's* actual possession under claim and color of title and payment of all taxes legally assessed, or in the case of unoccupied land, *seven years* payment of taxes made in good faith under claim and color of title, constitutes ownership to the extent of the paper title. Bonds, promissory notes, bills, written leases, written contracts, and other indebtedness in writing, judgments of a domestic court not of record, and suits for foreclosure of mortgages, *ten years*. Unwritten contracts, judgments of a foreign court of record, awards of arbitration, damages to real or personal property, detinue, and trover, and all civil actions not otherwise provided for, *five years*. Injuries to person, false imprisonment, malicious prosecution, statutory penalties, abduction, and seduction, *two years*. Slander and libel, *one year*. Actions against the representatives of deceased persons, *one year* from issuing letters testamentary or of administration. Persons under disabilities may bring real or personal actions within *two years* from the removal of

the same. If any person, liable to an action, conceals the same, the statute begins to run from date of the discovery. Any action defeated for any cause not affecting the right of action may be begun again within *one year* from such defeat. New promise must be in writing. The time of debtor's absence from the State is not included in the period of limitation.

INDIANA.

Real actions, judgments of a court of record and contracts in writing, other than those for the payment of money, *twenty years*. Promissory notes, bills of exchange, and other written contracts for the payment of money, *ten years*. Accounts and contracts not in writing, use, rents, and profits of real estate, injuries to property, trover, replevin, actions for relief against fraud, and for money collected by a public officer, *six years*. Injuries to person or character, statutory penalties, and indentures of apprenticeship, *two years*. Actions for the recovery of real property sold on execution, brought by the debtor or any person claiming under him, by title acquired after judgment, *ten years* from sale; for real property sold by executors, etc., on a judgment, by a party to the judgment, or persons claiming under him, subsequent to the judgment, *five years* after confirmation of sale. Actions not specially limited by statute, *fifteen years*. Time of debtor's absence from the State not included. In mutual, open, and current accounts, the cause of action is deemed to have accrued from date of last item proved. Persons under disabilities at the time of accrual of right may bring their action within *two years* after removal. An action failing for a cause not affecting the right other than plaintiff's negligence, may be recommended within *five years*. New promise must be in writing.

IOWA.

Judgments of courts of record, *twenty years*. Real actions, judgments other than of courts of record and written contracts, *ten years*. Contracts not in writing, and injuries to property, fraud, and all other actions not otherwise provided for, *five years*. Actions against sheriffs and public officers, *three years*; injuries to person or reputation, and statute penalties, *two years*. In open accounts, the cause of action accrues from the date of the last item proved. In all cases where by the death of a party an action against his estate is delayed beyond the limitation, such limitation shall be extended *six months* from such death. In the case of larceny by an administrator, executor, or guardian, statute does not begin to run until the settlement of the estate or the attainment of majority by the ward, as the case may be. Persons under disabilities may begin action within *one year* from the removal of the same. New promise or acknowledgment must be in writing. Period of debtor's non-residence in the State not included, but actions barred where debtor has previously resided, are barred here.

KANSAS.

Actions for recovery of land sold on execution, or by administrators, etc., by order of the court, *five years* from the recording of the deed; of

land sold for taxes, *two years*; other real actions, *fifteen years*; persons under disabilities have *two years* after removal. Contracts and agreements in writing, and actions on bonds of executors, etc., *five years*. Contracts not in writing, and statutory liabilities other than penalties or forfeitures, *three years*. Trespass on real property, actions for taking, detaining, or injuring personal property, relief from fraud, and injuries to rights arising on contract and not herein enumerated, *two years*. Libel, slander, assault and battery, malicious prosecution, false imprisonment, penalties, and forfeitures, *one year*. Time of debtor's absence from the State not included, and causes of action arising in another State, and barred there, are barred here also. Persons under disabilities may begin personal action within *one year* after removal thereof. After failure of an action for any cause not affecting the right of action, new action may be begun within *one year*. Acknowledgment of a debt barred must be in writing.

KENTUCKY.

Real actions, *fifteen years*; but *seven years'* occupation under connected record title is a bar. Persons under disabilities at the time of the accrual of such right may bring an action within *three years* after the removal of the same, provided the whole time is not extended beyond *thirty years*. Actions on judgments, bonds, and written contracts, *fifteen years*. Actions against sureties, *seven years*. Contracts not in writing, statute liabilities, penalties and forfeitures, trespass on real and personal property, trover, detinue, replevin, bills, notes, checks, and accounts between merchant and merchant, relief from fraud, and any action for injury to plaintiff's rights not arising on contract and not specially enumerated, *five years*. Merchants' accounts for goods sold, or charged in store account, *two years* from first day of January after delivery. Injuries to person, criminal conversation, breach of promise, seduction, malicious prosecution, conspiracy, libel and slander, *one year*. Actions not otherwise provided for, *ten years*. In case of persons under disabilities, limitation begins to run from the removal of the same. Absence from the State suspends the running of the statute in one's favor.

LOUISIANA.

Prescription against immovables *ten years* under title, and in good faith; *thirty years* without reference to title or good faith. Against movables, *three years* in good faith and under title. Actions on judgments for money and stated accounts, and all personal actions not specially provided for, *ten years*. Bills and notes, *five years*. Arrearages of rent, money lent, accounts of merchants, annuities, alimony, salaries of clerks, physicians', apothecaries', surgeons', sheriffs' and attorneys' accounts, *three years*. Actions for injuries to persons, property or reputation, actions by workmen, etc., for wages, and by innkeepers for lodging and board, freight of vessels and wages of crew, *one year*. Prescription does not run against minors and persons under interdiction unless specified by law.

MAINE.

Judgments of courts of record, *twenty years*. Real actions, *twenty years*; persons under disabilities, *twenty years* from removal of same, provided the whole time is not extended beyond *forty years*. Witnessed promissory notes and bank bills, *twenty years*. Debt on contract, and liabilities not under seal, judgment not of record, arrears of rent, assumpsit, and all actions on the case, waste, trespass, replevin, trover, and detinue, *six years*. Action against savings bank or trust companies for money paid on forged order, *three years*. Assault and battery, false imprisonment, libel and slander, *two years*; escape, *scire facias* against bail and trustees, *one year*; all other personal actions *twenty years*. On mutual and current accounts, action accrues from the last item proved. Limitation in case of persons under disabilities begins to run from removal of the same. After failure of action for any cause not affecting the right, a new action may be begun within *six months*. An acknowledgment must be express and in writing to revive a debt. Time of debtor's absence from the State is not included in period of limitation.

MARYLAND.

Twenty years gives title to land. Actions on judgment, recognizances, specialties, bonds of executors and administrators, *twelve years*. Bonds of sheriffs, etc., *five years*. Actions of account, assumpsit, or on the case, debt on simple contract, for rent in arrear, detinue, replevin, trespass or for injuries to real or personal property, illegal arrest or false imprisonment, *three years*. Slander, libel, assault and battery, and negligence causing death, *one year*. In case of persons under disabilities, limitation begins to run from the removal of the same. The time of limitation does not run in favor of persons absent from the State.

MASSACHUSETTS.

Real actions, *twenty years*. Witnessed promissory notes by original payee, and bills and notes of a bank, *twenty years*. Contracts not under seal, actions for arrears of rent, except upon leases under seal, replevin, and all other actions for taking, detaining, or injuring goods or chattels, and tort, except as hereafter specified, *six years*. Against sheriffs for misconduct of deputy, *four years*. Assault and battery, false imprisonment, and slander, actions against executors, etc., against sheriffs, etc., for taking personal property, and against cities, etc., for personal injuries, *two years*. Actions for libel and penalties on forfeitures by person to whom penalty is given, *one year*. On mutual and open account current, cause of action is deemed to have accrued at the time of the last item proved. Persons under disabilities may bring their action within the time limited after the removal of such disabilities. Limitations do not run against persons out of State. Actions against an executor or administrator of a deceased person within *one year* from his giving bond, but not until after six months. After failure of an action for any cause not affecting the right of action, a new action may be begun within *one year*. New promise must be in writing. All

other actions not otherwise limited, including those on judgments of courts of record in the United States, *twenty years*. Foreign judgments, *six years*.

MICHIGAN.

Real actions where defendant claims title through deed made upon sale by executor, sheriff, etc., under order of court, *five years*; where he claims title under deed made on tax sale, *ten years*; in all other cases, *fifteen years*, except when party entitled was absent from the United States, and not in British Provinces, when right of action accrued, and in that case, *twenty years*. Judgments of courts of record, *ten years*. Actions of debt upon contracts not under seal, judgments of courts not of record, actions for arrears of rent, assumpsit, or case founded on any contract or liability, waste, replevin, and trover, and all other actions for taking, detaining, or injuring goods or chattels, and all other actions on the case except slander and libel, *six years*. Actions against sheriffs for misconduct of deputies, and actions for personal injuries, *three years*. Trespass on land, assault and battery, false imprisonment, malpractice and slander, *two years*. Libel, *one year*. Contracts except as above, *ten years*. In actions on an account current, the cause of action is deemed to have accrued from the date of the last item proved in the account. Limitations in the case of persons under disabilities begin to run from the removal of the same. In case of death, actions which survive may be brought by or against executors and administrators within *two years* after granting letters testamentary or of administration. Time of defendant's absence from the State is not included in limitation.

MINNESOTA.

Real actions and foreclosures of mortgages, *fifteen years*, but no title by adverse possession of land registered under Torrens system. On judgments of courts of record, *ten years*. Contracts, statutory liability, trespass on real estate, actions for taking, detaining, or injuring personal property, replevin, injuries to the person or rights of another not arising on obligation, and actions for relief from fraud, dating from the time of the discovery of the same, *six years*. Actions against sheriffs, etc., and statutory penalty or forfeiture, *three years*. Libel, slander, assault, battery, and false imprisonment, or other tort resulting in personal injury, *two years*. Time of defendant's absence from the State is not included. On mutual and current accounts, the cause of action accrues from the date of the last item proved on either side, and suit may be brought within *six years*. Persons under disabilities other than infancy, within *one year* after removal of the same, provided the original limitation is not extended more than *five years*, and infants within *one year* after coming of age.

MISSISSIPPI.

Real actions, *ten years*. On judgments rendered in another State against a citizen of this State, *three years*, other judgments, *seven years*. Actions on a promissory note, bill of exchange, or other contract in writing, waste

and trespass on real estate, detinue, trover, or other actions for the recovery of personal property, or damages for its conversion, *six years*. Actions on open account and verbal contracts, *three years*. Assault, battery, maiming, false imprisonment, malicious arrest, slander, and libel, and actions for death of employee, *one year*. In case of persons under disabilities, limitations begin to run from the removal of the same. Actions against executors and administrators within *four years* from the date of the letters testamentary or of administration, but no suit shall be brought within *six months* of the issuance of letters. After the failure of any action for a cause not affecting the right of action, a new action may be begun within *one year*. Any new promise or acknowledgment must be in writing. When the right to recover on a debt secured by mortgage is barred, the remedy on the mortgage is also barred. The time of limitation does not run in favor of persons absent from the State.

MISSOURI.

Real actions, *ten years*. Writings, sealed or unsealed, for the payment of money or property, actions on covenants in deeds, and actions for relief not otherwise provided for, *ten years*. Judgments are presumed to be satisfied in *ten years*. Actions on contracts not in writing, express or implied, on open accounts, statutory liabilities, injury to the person or to personal property, actions for relief on ground of fraud, trespass on real estate, trover, detinue, and replevin, *five years*. Actions against sheriffs, etc., statutory penalties, *three years*. Libel, slander, assault, battery, false imprisonment and criminal conversation, *two years*. Actions for death caused by negligence, *one year*. Limitations in case of persons under disabilities begin to run from the removal of the same. Any action failing for a cause not affecting the right of action may be brought anew within *one year* after such failure. Any new promise must be in writing. The time of defendant's absence from the State without leaving a family or place of abode in the State is not included in the period of limitation.

MONTANA.

Real actions, actions for *mesne profits*, and judgments of courts of record, *ten years*. Contracts, obligations and liabilities in writing, *eight years*. Contracts not in writing, action to establish a will, judgments of courts not of record, and actions not otherwise provided for, *five years*. Actions against a sheriff, coroner or constable, except for escape, actions for damages for death, and obligations and liabilities not founded on writing, other than contract, account or promise, *three years*. Liabilities created by statute, libel, slander, assault, battery, false imprisonment or seduction, waste or trespass on real or personal property, taking, detaining or injuring goods or chattels, including actions for specific recovery, relief on ground of fraud or mistake, and action for killing or injuring stock by railroad, *two years*. Action against sheriff for escape, against municipal corporation for damages caused by mob or riot, action for violation of town or city ordinance, and action against tax collector for property seized, *one year*. Time of defendant's absence from State not included. Cause of

action barred in State where it accrued, barred here. In case of disability real action may be brought within *ten years* after disability ceases, or after death of person dying in disability. In personal actions period of disability not included, but limitation cannot be extended more than *five years*, and suit must be brought within one year after disability ceases.

NEBRASKA.

Real actions, foreclosure of mortgages, and actions on official and penal bonds, *ten years*. Specialties, contracts in writing, foreign judgments, *five years*. Contracts not in writing express or implied, damages for failure of consideration of contract, statutory liabilities, except penalties and forfeitures, trespass on real property, trover, detinue, replevin, and relief on ground of fraud, *four years*. Libel, slander, assault and battery, malicious prosecution, false imprisonment, statutory penalties and forfeitures, and forcible entry and detainer, *one year*. Persons under disabilities may bring action within the time limited after removal of the same. New promise in writing, or partial payment, revives the debt. Actions which have been barred by the laws of any other State or Territory are barred here.

NEVADA.

Real actions, except for mining claims, *five years*. Judgments and contracts in writing, *six years*. Actions on open account for goods sold and delivered, or charged in store account, and contracts not in writing, *four years*. Statute liabilities other than penalties or forfeitures, trespass on real estate, taking, detaining, or injuring goods and chattels, specific recovery of personal property, and relief on ground of fraud dating from the discovery thereof, *three years*. Actions for the recovery of mining claims, actions against sheriffs, etc., in their official capacity, statute penalties and forfeitures, libel, slander, assault, battery, and false imprisonment, *two years*. Statute does not run during defendant's absence from the State, or against persons under disability. Acknowledgment or new promise must be in writing. Actions barred by the laws of any other State or Territory are barred here. An action on a judgment, obligation, liability, contract for the payment of money, or damages obtained or incurred out of the State, must be commenced within *two years*.

NEW HAMPSHIRE.

Real actions, and actions on notes secured by mortgage, *twenty years*; persons under legal disabilities at the time of accrual of the right, *five years* from the date of removal of the same. On judgments, recognizances, and contracts under seal, *twenty years*. Trespass to the person and actions for defamatory words, *two years*. All other personal actions, *six years*. Writ of error, *three years* after judgment. *Scire facias* against bail and indorsers of writs, *one year*. Persons under disabilities may bring any personal action within *two years* after removal of the same. Any new promise, verbal or written, revives a debt. The time of limitation does not run in favor of persons absent from the State.

NEW JERSEY.

Real actions, *twenty years*. On judgments, *twenty years*. On lease under seal or contract under seal for payment of money only, *sixteen years*. Trespass, detinue, trover, replevin, debt other than specialty, actions on an account and actions on the case except slander, *six years*. Assault and battery, wounding, and imprisonment, *four years*. Slander and actions for injuries to person caused by wrongful act or neglect of any person or corporation, *two years*. In case of persons under disability, limitation begins to run from date of removal. Limitations do not run against persons out of the State. Debt revived by written promise or by part payment.

NEW MEXICO.

Real actions, *ten years*. Persons under disability, *one year* from the removal of the same. Judgments, *seven years*. Notes and other contracts in writing, *six years*. Accounts, contracts not in writing, injuries to property, conversion of personal property, relief on ground of fraud, and all other actions not specially provided for, *four years*. Actions against sureties on official bonds, against sheriffs in their official capacity, injuries to person or reputation, *two years*. Suits against estates of deceased persons *eighteen months* after date of administration. Representatives of persons dying within *one year* of expiration of limitation have *one year* from death to bring suit. Persons under disability are allowed *one year* from the removal of the same. New promise must be in writing.

NEW YORK.

Real property, *twenty years*. Judgments and sealed instruments, *twenty years*. Contracts, obligations, and liabilities, express or implied, other than the above, statute liabilities other than penalty or forfeiture, actions for relief on ground of fraud, judgments of courts not of record, actions for injury to property or persons, except as otherwise provided, and for recovery of chattels, *six years*. Actions for statutory penalties or forfeitures, against sheriffs or other officers for non-payment of money collected, against constables except for an escape, actions for injury to the person resulting from negligence, and action against executor, etc., for taking or injuring personal property, *three years*. Libel, slander, assault, battery, seduction, false imprisonment, malicious prosecution, and forfeitures to the State, *two years*. Against sheriffs for official liability, except non-payment of money collected, against other officers for an escape, *one year*. All other actions, *ten years*. In actions on an account current, the cause of action is deemed to have accrued from the date of the last item proved on either side. Limitation does not run against a person during his absence from the State, unless he designate a representative in manner provided by statute. New acknowledgment or promise must be in writing. Persons under disability may bring action within the time limited after removal of such disability, but in no case shall the period be extended more than *ten years* in real actions, or *five years* in personal actions except in case the disability be infancy. Action against non-resident barred by law of State of residence

barred here, unless limitation is less than that of New York, when New York limitation applies.

NORTH CAROLINA.

Real actions, *twenty years*; where adverse possession is under color of title, *seven years*; persons under disabilities *three years* after removal of the same. Judgments of a court of record, sealed instruments, foreclosure, and redemption of mortgages, *ten years*. Judgments of courts not of record, and actions by creditors of a deceased person against his representatives, *seven years*. Bonds of public officers, executors, etc., and actions for injury to any incorporeal hereditaments, *six years*. Actions against any railroad company for compensation for right of way, use and occupancy of land, and for damages caused by the construction of a road, *five years*. Actions on contracts or liabilities arising out of contracts, actions on statute liabilities other than penalty of forfeiture, trespass on real property, actions for taking, converting, or injuring goods and chattels, criminal conversation or any other injury to the person or rights of another not arising on contract or otherwise provided for, actions against sureties on bonds of executors, administrators, and guardians, *three years*. Actions against sheriffs, etc., for trespass under color of office, libel, assault, battery, and false imprisonment, actions for escape against sheriffs and other officers, *one year*. Slander, *six months*. Actions for relief not otherwise provided for, *ten years*. Persons under disabilities may bring their action within the time limited after removal of the same, except in case of actions for escape. Actions against representatives of deceased persons, *one year* after service on creditor of notice to present claim. New promise must be in writing. Time of absence from the State, if more than a year, is not reckoned.

NORTH DAKOTA.

Real actions, *twenty years*. Actions on judgments and instruments affecting title to real property, *ten years*. Actions on other contracts and obligations, express or implied, statutory liabilities other than penalties and forfeitures, trespass on real property, taking, detaining, injuring, or for recovery of personal property, criminal conversation and other injuries to persons and rights not arising on contract, relief on ground of fraud, *six years*. Actions against sheriffs, etc., except for escape, actions for penalties and forfeitures, *three years*. Libel, slander, assault and battery, false imprisonment, and malpractice, and injuries to person causing death, *two years*. Escape, *one year*. All other actions, *ten years*. Limitation does not run against persons out of the State. Persons under disability may bring action within the time limited after removal of such disability, but in no case shall the period be extended more than *ten years* in real actions or *five years* in personal actions except in case the disability be infancy.

OHIO.

Real actions, *twenty-one years*. Persons under disabilities, *ten years* after removal of the same. Bonds of executors, administrators, guardians, sheriffs, or other officers, *ten years*. Specialties and contracts in writing,

fifteen years. Contracts not in writing, and statutory liabilities, other than penalty or forfeiture, *six years.* Trespass on real property, trover, replevin, detinue, other actions for injury to the rights of plaintiff not arising on contract, and for relief from fraud, *four years.* Forceful entry and detainer, *two years.* Libel, slander, assault, battery, malicious prosecution, false imprisonment, and malpractice, statutory penalty or forfeiture, *one year.* Actions for relief not enumerated, *ten years.* Contest of will *one year* after probate. In case of persons under disabilities, limitations begin to run from the removal of the same. Any new acknowledgment must be in writing. Time of defendant's absence from the State is not included. Cause of action barred in State where it arose is barred here. Mortgage of registered land barred in *fifteen years* from maturity. No title to registered land by adverse possession or prescription.

OKLAHOMA.

Real actions, *fifteen years.* Actions on written contracts or official bonds, *five years.* Contracts not in writing, express or implied, and statutory liabilities other than penalty or forfeiture, *three years.* Trespass on real property, taking, detaining, or injuring personal property, and relief on ground of fraud, *two years.* Foreign judgments, libel, slander, assault, battery, malicious prosecution, false imprisonment, penalties and forfeitures, *one year.* Other actions for relief, *five years.* Persons under a disability should bring suit within *two years* after the removal thereof.

OREGON.

Real actions, judgments of record and sealed instruments, *ten years.* Other contracts, *six years.* Statutory liabilities other than penalty or forfeiture, waste, trespass on real estate, taking, detaining or injuring personal property, *six years.* Actions against sheriffs, etc., in official capacity, except for escape, penalties and forfeitures, *three years.* Assault; battery, false imprisonment, criminal conversation, or any injury to the person or rights of another, not arising on contract, and not specifically enumerated, *two years.* Actions against officers for an escape, *one year.* In actions on mutual, open, and current account, the cause of action is deemed to have accrued from the last item proved; but when *one year* shall have elapsed between any of a series of items, they are not to be deemed such an account. Limitations do not run against persons out of the State. Persons under disabilities, except infants, may bring action within *one year* after removal of the same, provided the time is not extended more than *five years*, and infants *one year* after attaining their majority. New promise must be in writing.

PENNSYLVANIA.

Real actions, *twenty-one years*; persons under disabilities, *thirty years* after the right of entry accrued. Trespass on real property, detinue, trover, replevin, actions of account and on the case, and actions of debt other than specialty, *six years.* Suits for specific performance, or to enforce trust or equity of redemption, *five years.* Judgments, mortgages, and

sealed instruments are presumed paid after *twenty years*, unless such presumption is positively rebutted. Trespass to person not resulting in death, *two years*; in case of death, *one year*. Slander and libel, *one year*. Limitations, in case of persons under disabilities, begin to run from removal of the same. Cause of action barred in State where it arose is barred here.

THE PHILIPPINES.

Real actions *ten years*. Persons under disability *three years* after removal of same. Actions on agreement or contract in writing, or decree of court *ten years*. On contract not in writing, express or implied, statute liability other than forfeiture or penalty, *six years*. For injury to or trespass upon real estate, for recovery of personal property or damages for taking, detaining or injuring personal property, injury to person other than assault and battery or false imprisonment, injury to plaintiff's rights not arising on contract and not hereinafter enumerated, and relief on ground of fraud, *four years*. For libel, *two years*. For slander, assault and battery, malicious prosecution, false imprisonment or penalty or forfeiture, *one year*. Any other action for relief *ten years*. Persons under disability *two years* after removal of same except in real actions, and in actions for libel, and then *one year*. Limitation does not run in favor of one absconding or concealing himself, or one out of the Islands. Action barred by laws of place where cause of action arose is barred here.

PORTO RICO.

Title to real property in possession and good faith passes in *ten years*; as to absent persons in *twenty years*; and, irrespective of good faith, in *thirty years*. In cases of disability, time begins to run from the removal of the same. Possession of a vessel in good faith after recorded title passes title in *three years*; otherwise, except as to the captain, in *ten years*. Merchants must keep their books *five years*. Possession of personal property in good faith passes title in *three years*; otherwise in *six years*. Actions against partners, and on notes, bills, cheques, dividends and drafts, on bottomry and respondentia bonds, and for libel and slander, and actions against lawyers, notaries, agents, clerks and servants, *three years*. Actions against directors or stockholders of corporations for penalty or liability, *three years*. Actions for negligence, *one year*; for rescission of contract, fraud, or for passage money, *six months*. Actions on mortgages, *twenty years*; personal actions, *fifteen years*. New promise or acknowledgment must be in writing, signed by party to be charged. Limitation does not run while defendant is out of the Island.

RHODE ISLAND.

Actions to recover real estate are not limited, but *ten years* of quiet, uninterrupted, and adverse possession is a good evidence of title. Slander, *one year*. Injuries to the person, *two years*. Other actions of trespass, *four years*. Actions of account, except such as concern the trade or merchandise between merchant and merchant; actions on the case, except for slander, and injuries to the person through negligence; debt founded on contract, except specialty; actions for arrearages of rent, actions of detinue

and replevin, *six years*. Debt other than the preceding and covenant, *twenty years*. In case of persons under disabilities, the limitation begins to run from the removal of the same. Actions against executors, etc., except for funeral charges, etc., cannot be brought for *six months* after first publication of notice of appointment, and must be brought within *two years*. Limitation does not run in favor of a defendant during absence from the State unless he leave attachable property within the State.

SOUTH CAROLINA.

Real actions, *ten years*. Judgments and sealed instruments, other than sealed notes and bonds for the payment of money only, not secured by mortgage, *twenty years*. Other contracts, statutory liabilities except forfeitures and penalties, trespass on real estate, trover, detinue, and replevin, criminal conversation, or any other injury to the person or rights of another not arising on contract, relief from fraud, and actions for wrongful acts causing death, *six years*. Actions against sheriffs, etc., except for escapes, and actions for penalties and forfeitures, *three years*. Libel, slander, assault, battery, false imprisonment, and penalties and forfeitures to State, *two years*. Actions against officers for an escape, *one year*; other actions for relief, *ten years*. In actions of account, the limitation begins to run from the last item proved on either side. Persons under disabilities may bring action for recovery of real estate within *five years* after the removal of the same, provided the time is not extended more than *ten years*; in other cases within *one year* of such removal, but not to extend time more than *five years*. Period of defendant's absence from the State, if more than *one year*, is not included.

SOUTH DAKOTA.

Real actions and actions on judgments rendered in the State, and on sealed instruments, *twenty years*. Other judgments, *ten years*. Foreclosure of mortgage, *fifteen years*. Actions on other contracts, express or implied, statutory liabilities other than penalties or forfeitures, trespass on real property, taking, detaining, or injuring personal property, or recovering same, criminal conversation, or other injury to rights of others not arising on contract, relief on ground of fraud, *six years*. Actions against sheriffs, etc., except for escape, and for penalties and forfeitures, *three years*. Libel, slander, assault and battery and false imprisonment, *two years*. Actions against sheriff for escape, *one year*. Other actions, *ten years*. Limitation does not run against person out of State. Persons under disability may bring action within the time limited after removal of such disability; but in no case shall the period be extended more than *ten years* in real actions, or *five years* in personal actions, except in case the disability be infancy.

TENNESSEE.

Real actions, *seven years*. Actions against guardians, executors, administrators, sheriffs, clerks, and other public officers, on their official bonds, judgments, mortgages, and all other cases not expressly provided for, *ten*

years. Actions against the sureties of guardians, executors, administrators, sheriffs, clerks, and other public officers, and actions for rent, and for use and occupation of land, and on other contracts not mentioned, *six years.* Injuries to real or personal property, detainee, and trover, *three years.* Libel, injuries to person, false imprisonment, malicious prosecution, seduction, breach of promise, and statutory penalties, *one year.* Slander, *six months.* A new action may be begun within *one year* after the reversal or arrest of judgment in the original. Persons under disabilities may bring action within *three years* after removal of the same, unless the limitation is less than three years, in which case action must be brought within the time limited after such removal. Actions by a resident of the State against an executor, etc., must be brought within *two years and six months* after his appointment, by a non-resident within *three years and six months.* Period of defendant's absence from the State is not included. Actions barred by the laws of the State where they accrued are barred here.

TEXAS.

Real actions, against one in possession under color of title, *three years.* *Five years'* peaceable possession of real estate, cultivating and using the same, paying taxes thereon, and claiming under registered deed, not forged, gives good title. *Ten years'* peaceable possession, cultivation, and enjoyment, without evidence of title, gives full title to one hundred and sixty acres, and to all beyond in actual possession. Judgments, *ten years.* Debt on written contract, by copartners for settlement of partnership accounts, mutual current accounts between merchants, suits for specific performance of agreement to convey land, and all other causes of action not specially enumerated, *four years.* Injuries to the person or property of another, conversion or detention of personal property, forcible entry and detainer of real estate, actions on open accounts except between merchants, and contracts not in writing, *two years.* Injuries to character or reputation, and breach of promise, *one year.* Limitation does not run against persons under disability. Power of sale in mortgage expires in *four years* after maturity.

UTAH.

Real actions, *seven years.* In case of disability, two years after the removal thereof. Judgments, *eight years.* Contracts or obligations in writing, and actions for *mesne* profits of land, *six years.* Contracts not in writing, and open accounts for goods, *four years.* Trespass on real estate, taking, detaining or injuring personal property, and relief on the ground of fraud, dating from the discovery thereof, *three years.* Actions against sheriffs, etc., and actions for death caused by wrongful act or neglect, *two years.* Statutory penalties and forfeitures, libel, slander, assault and battery, or false imprisonment, and actions against municipal corporation for damages caused by mob or riot, *one year.* Period of defendant's absence from the State is not included. New acknowledgment or promise must be in writing. Persons under a disability may bring actions within *two years* after removal.

VERMONT.

Real actions, *fifteen years*. Witnessed promissory notes, *fourteen years*. Judgments of courts of record, specialties, and covenants except of seizin, *eight years*. Debt on any contract, obligation, or liability, not under seal, or on judgments of courts not of record, debt for rent, actions of account, assumpsit, or case founded on any contract or liability, trespass on land, replevin, actions for taking, detaining or injuring goods and chattels, and actions on the case, except libel and slander, *six years*. Action against sheriff for act of deputy, *four years*. Assault and battery, and false imprisonment, libel, slander, damages for bodily hurt, or injury to personal property, *three years*. Executors and administrators may bring actions which survive, *two years* after death of the party entitled. Time of absence from the State without known attachable property in the State is not computed in the limitation. Limitations in case of persons under disabilities begin to run from the removal of the same. New promise must be in writing, and signed.

VIRGINIA.

Land east of the Alleghanies, *fifteen years*; west of the Alleghanies, *ten years*. Judgments where there is officer's return on execution, *twenty years*; when none, *ten years*; judgments of other States, *ten years*. Contracts in writing under seal, *ten years*; not under seal, *five years*. All other contracts, *three years*. Bonds of indemnity, bonds of executors, administrators, curators, committees, guardians, sheriffs, clerks, sergeants, or other fiduciary or public officers, *ten years*. Recognizance of bail in civil suit, *three years* after right to sue out execution has accrued, omitting period of suspension by injunction or other legal process; other recognizance, *ten years*. Actions for personal injury or death, *one year*. Actions between partners for settlement, and accounts concerning the trade of merchandise between merchant and merchant, *five years* from cessation of dealings. All other personal actions, *five years*. Acknowledgment of a debt must be in writing. Persons under disabilities may bring actions within the time limited after the removal of their disabilities, provided it be within *twenty years* from the original accrual of the right. Actions failing by abatement, arrest, or reversal of judgment, may be brought again within *one year*. The time of limitation does not run in favor of persons who are absent from the State.

WASHINGTON.

Real actions, *ten years*. Judgments, contracts in writing, actions for rents and profits or use and occupation of real estate, *six years*. Actions by an heir or assign, or by a ward or one claiming under him, for the recovery of land sold by an executor, administrator, or guardian as the case may be, *five years*; except that such action may be brought within *three years* after removal of disability of ward. Waste or trespass upon real estate, actions for taking, detaining, or injuring personal property, or for the specific recovery thereof; or for injury to the person or rights of another, not specially enumerated, contracts not in writing, relief on

ground of fraud, actions against sheriffs, etc., except for escape, statute penalties and forfeitures to party aggrieved, seduction, and breach of promise of marriage, *three years*. Libel, slander, assault and battery, false imprisonment, and penalties to the State, *two years*. Action against officer for escape, and against executors or administrators, *one year*. On a claim rejected by executor or administrator, *three months*. Limitation does not run against parties under disability, until after the removal of the same. Causes of action arising in another State or Territory, between non-residents of this State and barred by law there, barred here also. New acknowledgment of promise must be in writing.

WEST VIRGINIA.

Real actions, *ten years*; persons under disabilities, *five years* after the removal of the same, provided the whole limitation is not more than *twenty years*. Indemnity bonds, bonds of executors, administrators, guardians, sheriffs, or other public officers, and other instruments under seal, awards and contracts in writing not under seal, *ten years*. Other contracts, *five years*. Partnership accounts and accounts between merchant and merchant, *five years* from last dealings. Actions on recognizances other than bail in a civil suit, and judgments, *ten years*. Recognizance of bail in civil suit, *three years*. All other actions, *five years*. Actions on judgments barred where rendered are barred here; and actions on contracts made to be performed in another State and barred there, are barred here also. Limitation does not run in favor of a resident of the State during his absence therefrom or while absconding or concealing himself. New acknowledgment or promise must be in writing.

WISCONSIN.

Real actions, *twenty years*; persons under disabilities, *five years* after removal of the same. An adverse possession of *ten years* under claim of title under written instrument or judgment is in certain cases a bar. Judgments of courts of record of the State of Wisconsin or of the United States sitting in the State, and sealed instruments, when the cause of action accrues within the State, *twenty years*. Judgments of other courts of record and sealed instruments accruing without the State, and actions for damages for flowing land, *ten years*. Other contracts, obligations, or liabilities, including actions on municipal bonds and coupons, judgments of courts not of record, statutory liabilities other than penalties or forfeitures, injury to property, real or personal, injury to person, character, or rights not arising on contract and otherwise provided for, and actions for recovery of personal property or damages for taking or detention of same, and actions for relief on ground of fraud, *six years*. Actions against sheriffs, coroners and constables, for acts done in their official capacity, except for escapes, *three years*. Statutory penalties, and forfeitures, libel, slander, assault, battery, false imprisonment, and action for negligently or wrongfully causing the death of another, *two years*. Actions against sheriffs, etc., for escapes, and actions for damages for seduction or alienation of affections, *one year*. In actions for damages for injury to person, notice

must be given within *two years*. Action against bank for paying forged check *one year* after return of check to depositor. Persons under disabilities, except infants, may bring action after the disability ceases, provided the period is not extended more than *five years*, and infants *one year* after coming of age; actions by representatives of deceased persons, *one year* from death; against the same, *one year* from granting letters testamentary or of administration. New promise must be in writing. The time of limitation does not run in favor of persons absent from the State.

WYOMING.

Real actions, *ten years*. Bonds of executors, administrators, guardians, sheriffs, and other officers, all bonds required by statute, and causes of action not specially enumerated, *ten years*. Specialties and contracts in writing, *ten years*. Contracts not in writing, and statutory liabilities other than forfeiture or penalty, *eight years*; but on all foreign claims, judgments, or contracts contracted or incurred before the debtor became a resident of the State, actions must be commenced within *five years* after he establishes his residence in the State. Trespass on real estate, actions for taking, detaining, or injuring personal property, or for the specific recovery of the same, action for injury to plaintiff's rights not arising on contract, or for relief on ground of fraud and those not otherwise provided for, *four years*. Libel, slander, assault and battery, malicious prosecution, false imprisonment, or statutory penalty or forfeiture, *one year*. Limitations in personal actions do not run against persons under disabilities until after the removal of the same. Time of defendant's absence from the State or absconding or concealment is not reckoned. Actions on causes arising out of the State between non-residents and barred there, cannot be maintained here. New acknowledgment or promise must be in writing.

CHAPTER XXIV.

INTEREST AND USURY.

SECTION I.

WHAT INTEREST IS, AND WHEN IT IS DUE.

INTEREST means a payment of money for the use of money. In most civilized countries the law regulates this; that is, it declares how much money may be paid or received for the use of money; and this is called legal interest; and if more is paid or agreed to be paid than is thus allowed, it is called usurious

interest. By interest is commonly meant legal interest; and by usury, usurious interest.

Interest may be due, and may be demanded by a creditor, on either of two grounds. One, a bargain to that effect; the other, by way of damages for withholding money that is due. Indeed, it may be considered as now the settled rule, that wherever money is withheld which is certainly due, the debtor is to be regarded as having promised legal interest for the delay. And upon this implication, as on most others, the usage of trade, and the customary course of dealings between the parties, would have great influence.

Thus, in New York, it was held that, where it was known to one party that it was the uniform custom of the other to charge interest upon articles sold or manufactured by him after a certain time, the latter was allowed to charge interest accordingly.

In general, we may say that interest is allowed by law as follows: on a debt due by judgment of court, it is allowed from the rendition of judgment; and on an account that has been liquidated, or settled, from the day of liquidation; for goods sold, from the time of the sale, if there be no credit, and if there be, then from the day when the credit expires; for rent, from the time that it is due, and this even if the rent is payable otherwise than in money, but is not so paid; for money paid for another or lent to another, from the payment or loan.

Interest is not generally recoverable upon claims for unliquidated damages, nor in actions founded on tort. By *unliquidated damages* is meant damages not agreed on, and of an uncertain amount, and which the jury must determine. By *torts* is meant wrongs, or injuries inflicted. But although interest cannot be given under that name, in actions of this sort, juries are sometimes at liberty to consider it in estimating the damages.

It sometimes happens that money is due, but not now payable; and then the interest does not begin until the money is payable. As if a note be on demand, the money is always due, but it is not payable until demand; and therefore is not on interest until demand. But a note payable at a certain time, or after a certain period, carries interest from that time, whether it be demanded or not.

The laws which regulate interest and prohibit usury are very various, and are not perhaps precisely the same in any two of our States. Formerly, usury was looked upon as so great an offense, that the whole debt was forfeited thereby. The law now, however, is—generally, at least—much more lenient. The theory that money is, like any merchandise, worth what it will bring and no more, and that its value should be left to fix itself in a free market, is certainly gaining ground. In many States there are frequent efforts so to change the statutes of usury that parties may make any bargain for the use of money which suits them; but when they make no bargain, the law shall say what is legal interest. And, generally, the forfeiture is now much less than the whole debt.

At the close of this chapter will be found a statement of the usury laws of the States.

There is no especial form or expression necessary to make a bargain usurious. It is enough for this purpose if there be a substantial payment, or promise of payment, of more than the law allows, either for the use of money lent, or for the forbearance of money due and payable. One thing, however, is certain: there must be a usurious intention, or there is no usury. That is, if one miscalculates, and so receives a promise for more than legal interest, the error may be corrected, the excess waived, and the whole legal interest claimed. But if one makes a bargain for more than legal interest, believing that he has a right to make such a bargain, or that the law gives him all that he claims, this is a mistake of law, and does not save the party from the effect of usury.

It may be well to remark, that the law makes a very wide distinction between a *mistake of fact* and a *mistake of law*. Generally, it will not permit a party to be hurt by a mistake of fact; but it seldom suffers any one to excuse himself by a mistake of law, because it holds that everybody should know the law, and because it would be dangerous to permit ignorance of the law to operate for any one's benefit.

The question has been much discussed, whether the use of the common tables which are calculated on the supposition that a year consists of 360 days, is usurious. In New York, it has been held that it is; but in Massachusetts, and some other States, it is held that the use of such tables does not render the

transaction usurious. We think this latter the better opinion.

If a debtor request time, and promise to pay for the forbearance legal interest, and as much more as the creditor shall be obliged to pay for the same money, this is not a usurious contract. And, even if usurious interest be actually taken, this, although strong evidence of an original usurious bargain and intent, is not conclusive, but may be rebutted by adequate proof or explanation.

When a statute provides that a usurious contract is wholly void, such a contract cannot become good afterwards; and therefore a note which is usurious, if it be therefore void by law in its inception, is not valid in the hands of an innocent indorsee. But it is otherwise where the statute does not declare the contract void on account of the usury. If a note, or any securities for a usurious bargain, be delivered up by the creditor and canceled, and the debtor thereupon promises to pay the original debt and lawful interest, this promise is valid.

New securities for old ones which are tainted with usury are equally void with the old ones, or subject to the same defense. Not so, however, if the usurious part of the original securities be expunged, and not included in the new; or if the new ones are given to third parties, who were wholly innocent of the original usurious transaction. And if a debtor suffers his usurious debt to be sued, and a judgment recovered against him for the whole amount, it is then too late for him to take any advantage of the usury.

So, if land or goods be mortgaged to secure a usurious debt, and afterwards conveyed to an innocent party, subject to such mortgage, the latter cannot set up the defense of usury, and thereby defeat an action to enforce the mortgage.

Usurers resort to many devices to conceal their usury; and sometimes it is very difficult for the law to reach and punish this offense. A common method is for the lender of money to sell some chattel, or a parcel of goods at a high price, the borrower paying this price in part as a premium for the loan. In England, it would seem from the reports to be quite common for one who discounts a note to do this nominally at legal rates; but to furnish a part of the amount in goods at a very high valuation. In all cases of this kind, or rather in all cases where questions of this kind arise, the court endeavors to ascertain the

real character of the transaction. Such a transaction is always suspicious, for the obvious reason that one who wants to borrow money is not very likely to desire at the same time to buy goods at a high price. But the jury decide all questions of this kind; and it is their duty to judge of the actual intention of the parties from all the evidence offered. If that intention is substantially that one should loan his money to another, who shall therefore, in any manner whatever, pay to the lender more than legal interest, it is a case of usury. "Where the real truth is a loan of money," said Lord Mansfield, "the wit of man cannot find a shift to take it out of the statute." If this great judge meant only that, whenever, legal evidence shows the transaction to be a usurious loan, the law pays no respect whatever to any pretense or disguise, this is certainly true. But the wit of man does undoubtedly devise many "shifts," which the law cannot detect. There seems to be a general rule in these cases in reference to the burden of proof; the borrower must first show that he took the goods on compulsion; and then it is for the lender to prove that no more than their actual value was received or charged for them.

If one should borrow stock at a valuation much above the market rate, and agree to pay interest on this value for the use of the stock to sell or pledge, this would be usurious.

One may lend his stock, and may, without usury, give the borrower the option to replace the stock, or to pay for it at even a high value, with interest. But, if he reserves this option to himself, the bargain is usurious, because it gives the lender the right to claim more than legal interest. So, the lender may reserve either the dividends or the interest, if he elects at the time of the loan; but he cannot reserve the right of electing at a future time, when he shall know what the dividends are.

A contract may seem to be two, and yet be but one, if the seeming two are but parts of a whole. Thus, if A borrows one thousand dollars, and gives a note promising to pay legal interest for it, and then gives another note for (or otherwise promises to pay) a further sum, in fact for no consideration but the loan, this is all one transaction, and it constitutes a usurious contract.

But if there be a loan on legal terms, with no promise or obligation on the part of the borrower to pay any more, this

might not be invalidated by a mere understanding that the borrower should, when the money was paid by him, make a present to the lender for the accommodation. And if, after a payment has been made which discharges all legal obligation, the payer voluntarily adds a gift, this would not be usurious. But in every such case the question for a jury is, What was this additional transfer of money, in fact; was it a voluntary gift, or was it the payment of a debt? If an honest gift, it was not usurious; if a payment, it was usurious.

A foreign contract, valid and lawful where made, may be enforced in a State in which such a contract, if made there, would be usurious. But if usurious where it was made, and by reason of that usury wholly void in that State, if it is put in suit in another State where the penalty for usury is less, it cannot be enforced under this mitigated penalty; but it is wholly void there also.

SECTION II.

A CHARGE FOR RISK OR FOR SERVICE.

It is undoubtedly lawful for a lender to charge an extra price for the risk he incurs, provided that risk be perfectly distinct and different from the merely personal risk of the debtor's being unable to pay. If anything is paid for this last risk, it is certainly usury.

So one may charge for services rendered, for brokerage, or for rate of exchange, and may even cause a domestic loan or discount to be actually converted into a foreign one, so as to charge the exchange; and this would not be usurious. But here, as before, and indeed throughout the law of usury, it is necessary to remember that the actual intention, and not the apparent purpose or form of the transaction, must determine its character. So, if one lends money to be used in business, and lends it upon such terms that he becomes a partner in fact with those who use it, taking his share of the profits, and becoming liable for the losses, this is not usurious.

So, if one enters a partnership, and provides money for its business, and the other party is to bear all the losses, and also to pay the capitalist more than legal interest as his share of the profits, this is not usurious, because there is no loan, if

there be in fact a partnership; for then there is a very important risk, as he becomes liable for all the debts of the partnership.

The banks always get more than legal interest by their way of discounting notes and deducting the whole interest from the amount they give. This is perfectly obvious if we take an extreme case; as if a bank discounted a note of a thousand dollars at fifteen years, in Massachusetts, the bank would discount the interest of all the fifteen years; the borrower would receive one hundred dollars, and at the end of fifteen years he would pay back one thousand dollars, which is equivalent to paying nine hundred dollars for the use of one hundred for fifteen years, whereas the legal interest would be but ninety dollars. But this method is now established by usage and sanctioned by law. It should, however, be confined to discounts of negotiable paper, not having a very long time to run. For the rule is founded upon usage, and the usage goes no further.

SECTION III.

THE SALE OF NOTES.

THERE are, perhaps, no questions in relation to interest and usury of more importance than those which arise from the sale of notes or other securities. In the first place, there is no doubt whatever that the owner of a note has as good a right to sell it for the most he can get, as he has to sell any goods or wares which he owns. There is here no question of usury, because there is no loan of money, nor forbearance of debt. But, on the other hand, it is quite as certain that if any person makes his own note, and sells that for what he can get, this, while in appearance the sale of a note, is in fact the giving of a note for money. It is a loan and a borrowing, and nothing else. And if the apparent sale be for such a price that the seller pays more than legal interest, or, in other words, if the note bear interest and is sold for less than its face, or is not on interest, and more than interest is discounted, it is a usurious transaction. Supposing these two rules to be settled, the question in each case is, under which of them does that case come, or to which of them does it draw nearest.

We are not aware of any general principle so likely to be of use in determining these questions as this; if the seller of a note acquire it by purchase, or if it is for money advanced or lent by him to its full amount, he may sell it for what he can get; but if he be the maker of the note, or the agent of the maker, and receive for the note less than would be paid him if only a lawful discount were made, it is a usurious loan. In other words, the first holder of a note (and the maker of a note is not and cannot be its first holder) must pay to the maker the face of the note, or its full amount. And after paying this, he may sell it, and any subsequent purchaser may sell it as merchandise. The same rule must apply to corporations, and all other bodies or persons who issue their notes or bonds on interest. If sold by brokers for them, for less than the full amount, it is usurious. Nor can such notes come into the market free from the taint and the defense of usury, unless the first party who holds them pays for them their full value.

But then comes another question. If a note be offered for sale, and be sold for less than its face, and the purchaser supposes himself to buy it from an actual holder and not from the maker, can the maker interpose the defense that it was actually usurious, on the ground that the seller was only his agent? I should say that he could not; that there can be no usury unless this is intended; and that the guilty intention of one party cannot affect another party who was innocent.

I should say also, that one who, having no interest in a note, indorses or guarantees it for a certain premium, will be liable for its face; he does not now add his credit to the value of his property and sell both together, as where he indorses a note which he holds himself, but sells his credit alone. This transaction I should not think usurious. And if it was open to no other defense, as fraud, for example, and was in fact what it purported to be, and not a mere cover for a usurious loan, we know no good reason why such indorser or guarantor should not be held liable to the full amount of his promise.

SECTION IV.

COMPOUND INTEREST.

COMPOUND interest is sometimes said to be usurious; but it is not so; and even those cases which speak of it as "savoring of usury" may be thought to go too far, unless every hard bargain for money is usurious. As the authorities now stand, however, a contract or promise to pay money with compound interest cannot, generally, be enforced. On the other hand it is neither wholly void, nor attended with any penalty, as it would be if usurious; but is valid for the principal and simple interest only.

Nevertheless, compound interest is sometimes recognized as due by the courts of law, as well as of equity; and sometimes, too, by its own name. Thus, if a trustee be proved to have had the money of the party for whom he is trustee (who is called in law his *cestui que trust*) for a long time, without accounting for it, he may be charged with the whole amount, reckoned at compound interest, so as to cover his unlawful profits. If compound interest has accrued under a bargain for it, and been actually paid, it cannot be recovered back, as money usuriously paid may be. And if accounts are agreed to be settled by annual rests, which is in fact compound interest, or are actually settled so in good faith, the law sanctions this. Sometimes, in cases of disputed accounts, the courts direct this method of settlement.

Where money due on interest has been paid by sundry instalments, the mode of adjusting the amount which has the best authority, and the prevailing usage in its favor, seems to be this: Compute the interest due on principal sum to the time when a payment, either alone or in conjunction with preceding payments, shall equal or exceed the interest due on the principal. Deduct this sum, and upon the balance cast interest as before, until a payment or payments equal the interest due; then deduct again, and so on.

ABSTRACTS OF THE USURY LAWS OF THE STATES AND TERRITORIES.

These laws are stated from the latest information, but are constantly undergoing change, and are likely to be so until restrictions upon interest are abolished, as they are now in some States.

ALABAMA.

Legal interest, eight per cent. Plea of usury defeats recovery of all interest.

ALASKA.

Legal interest, eight per cent., but twelve per cent. may be expressly agreed upon. Double the amount paid can be recovered within two years on usurious contracts. Judgment must be given against the defendant for the amount due without interest, and against the plaintiff for costs when a contract is discovered to be usurious.

ARIZONA.

Legal interest, six per cent., but parties may agree in writing for any rate not exceeding twelve per cent.

ARKANSAS.

Legal interest, six per cent., but parties may contract for any rate not exceeding ten per cent. Contracts for more than ten per cent. are void, both as to principal and interest.

CALIFORNIA.

Legal interest, seven per cent., but parties may agree in writing for any rate.

CANADA, DOMINION OF.

Legal interest, generally six per cent., with the right to agree on what parties will; but with exceptions in different provinces, especially as to banks and other corporations, and loans on different kinds of security.

COLORADO.

Legal interest, eight per cent., but parties may agree in writing upon any rate; except that on loans not exceeding five hundred dollars, secured by mortgage of personal property or assignment of wages, not more than one per cent. per month is allowed.

CONNECTICUT.

Legal interest, six per cent., in the absence of any agreement, and no more can be recovered after maturity of obligation. Rate limited to twelve per cent. for all except incorporated banks, trust companies, licensed pawn-brokers, and real estate mortgages over five hundred dollars.

DELAWARE.

Legal interest, six per cent. Penalty for taking more, forfeiture of the money lent—half to the prosecutor, half to the State.

DISTRICT OF COLUMBIA.

Legal interest, six per cent. Ten per cent. may be paid on written agreement. Contract in writing for more than ten per cent., or verbal contract for more than six per cent., forfeits all interest.

FLORIDA.

Legal interest, eight per cent. Contracts for more than ten per cent. are void and principal only can be recovered.

GEORGIA.

Legal interest, seven per cent. Eight per cent. may be agreed upon in writing. Usury forfeits entire interest.

HAWAII.

Legal interest, eight per cent.; on judgments six per cent. Parties may stipulate in writing for one per cent. per month. Excess and compound interest cannot be recovered.

IDAHO.

Legal interest, seven per cent. Parties may agree in writing for any rate not exceeding ten per cent. Penalty for greater rate, forfeiture of entire interest; if paid, it may be recovered.

ILLINOIS.

Legal interest, five per cent. Parties may agree upon seven per cent. in writing. If more is agreed on or is taken upon any contract, verbal or written, only the principal can be recovered. Licensed parties may charge three and one-half per cent. per month on loans under one hundred dollars.

INDIANA.

Legal interest, six per cent. Eight per cent. may be agreed upon in writing. It may be taken for the period of a year or less in advance. Excess cannot be recovered, and, if paid, shall be considered as paid on account of the principal. On loans under three hundred dollars, licensed parties may charge three and one-half per cent. per month.

IOWA.

Legal interest, six per cent. Parties may agree in writing for eight per cent. If contract be for more, the creditor recovers only the principal, and eight per cent. on the amount of the contract is forfeited to the State.

KANSAS.

Legal interest, six per cent. Parties may stipulate in writing for any rate not exceeding ten per cent. If more than ten per cent. be contracted for, double the excess is forfeited.

KENTUCKY.

Legal interest, six per cent. Extra interest forfeited; if paid, may be recovered back.

LOUISIANA.

Legal interest, five per cent. Eight per cent. may be stipulated in writing, and a higher rate may be collected if embodied in the obligation or as

discount; but any agreement for more than eight per cent. forfeits the entire interest.

MAINE.

Legal interest, six per cent. There are no usury laws.

MARYLAND.

Legal interest, six per cent. Excess forfeited.

MASSACHUSETTS.

Legal interest, six per cent. Any rate of interest or discount may be made by written agreement. Debtor may discharge loan of less than one thousand dollars by tender of principal and eighteen per cent. interest, with not exceeding five dollars for expenses.

MICHIGAN.

Legal interest, five per cent. Parties may agree in writing for seven per cent. If more is agreed for, all interest is forfeited.

MINNESOTA.

Legal interest, six per cent. Parties may agree in writing for ten. Excess, if paid, may be recovered. Usurious contracts are void, except as to *bona fide* purchasers of negotiable paper before maturity. Rate after maturity same as before; contract for more forfeits all interest.

MISSISSIPPI.

Legal interest, six per cent. Parties may agree in writing for eight per cent. If more be agreed for, the whole interest will be forfeited.

MISSOURI.

Legal interest, six per cent., but parties may agree in writing for any rate not to exceed eight per cent. If more be taken or agreed for, the creditor recovers only the principal and legal interest.

MONTANA.

Legal interest, eight per cent. Parties may agree in writing for twelve. If more be charged, double entire interest forfeited.

NEBRASKA.

Legal interest, seven per cent. Parties may agree on any rate not exceeding ten per cent. On proof of illegal interest, plaintiff recovers only principal.

NEVADA.

Legal interest, seven per cent. But parties may agree in writing twelve. Excess forfeited.

NEW HAMPSHIRE.

Legal interest, six per cent. A person receiving more forfeits three-fold the excess; but contracts are not invalidated by any stipulation for usurious interest, and principal and legal interest may be recovered.

NEW JERSEY.

Legal interest, six per cent. On usurious contract, principal only can be recovered.

NEW MEXICO.

Legal interest, six per cent., but parties may agree for ten per cent., or twelve per cent. if no collateral. If more be charged, all interest deducted from principal, with twice the amount of any interest paid.

NEW YORK.

Legal interest, six per cent. A contract for more than legal interest is wholly void. If more than legal interest is paid, it may be recovered back within a year by payer, or within the next three years by the overseers of the poor. No corporation can interpose the defense of usury; nor can a joint-stock company having the powers of a corporation. When loans on demand of five thousand dollars or more are made on security of bills of lading, negotiable instruments, etc., parties may agree in writing on any rate of compensation. Usury is a misdemeanor punishable by fine or imprisonment.

NORTH CAROLINA.

Legal interest, six per cent. On usurious contracts no interest is recoverable. If usurious interest be paid, twice the amount may be recovered by debtor if suit be brought within two years.

NORTH DAKOTA.

Legal interest, six per cent. Ten per cent. may be contracted for in writing. On usurious contract only principal can be recovered. If usurious interest be paid, twice the amount may be recovered back if sued for in two years.

OHIO.

Legal interest, six per cent. Any rate not exceeding eight per cent. may be agreed upon in writing. On usurious contract only principal and six per cent. interest can be recovered.

OKLAHOMA.

Legal interest, seven per cent. Ten per cent. may be contracted for. Usury works forfeiture of twice the amount of interest.

OREGON.

Legal interest, six per cent. Parties may agree for ten per cent. Usury works a forfeiture of the principal and interest.

PENNSYLVANIA.

Legal interest, six per cent. Excess forfeited. If paid, may be recovered back if sued for within six months. Commission merchants and agents may contract with parties out of the State for seven per cent. On demand loans for five thousand dollars or more, secured by bills of lading, etc., any rate may be agreed upon.

INTEREST AND USURY.

THE PHILIPPINES.

Legal interest, six per cent. Twelve per cent. allowed on real estate mortgages, and fourteen per cent. on loans not so secured. Usurious instruments void, except as to *bona fide* purchaser in good faith and for valuable consideration before maturity, and all interest paid may be recovered.

PORTO RICO.

Legal interest, in absence of special agreement, six per cent. Twelve per cent. may be agreed upon. If more be contracted for contract is void as to excess, and excess interest may be recovered if sued for in one year.

RHODE ISLAND.

Legal interest, six per cent. Any higher rate may be agreed upon, not exceeding thirty per cent. on loans over fifty dollars, and not exceeding five per cent. per month on loans under fifty dollars for three months or less, except by licensed pawnbrokers.

SOUTH CAROLINA.

Legal interest, seven per cent. Parties may agree in writing for eight per cent. Usury works a forfeiture of entire interest. If usurious interest be paid, double the amount may be recovered.

SOUTH DAKOTA.

Legal interest, seven per cent. Parties may contract for twelve per cent. Real-estate mortgages ten per cent. Usury forfeits entire interest, and is a misdemeanor punishable by fine and imprisonment.

TENNESSEE.

Legal interest, six per cent. Excess is forfeited. Loans on mortgages of land in other states may bear interest at rates permitted in such States. Usurious interest if paid may be recovered. Usury is a misdemeanor.

TEXAS.

Legal interest, six per cent. Parties may agree in writing for ten per cent. If more is agreed for, no interest can be recovered; if paid, double the amount can be recovered.

UTAH.

Legal interest, eight per cent. Twelve per cent. may be agreed on in writing. Excess if paid may be recovered. Usurious instruments void.

VERMONT.

Legal interest, six per cent. Excess forfeited, and if paid may be recovered.

VIRGINIA.

Legal interest, six per cent. If more be charged, no interest can be recovered. Usurious interest paid may be recovered within one year.

WASHINGTON.

Legal interest, six per cent. Any rate not exceeding twelve per cent. may be agreed upon in writing. If more be contracted for, only the principal, less the whole amount of unpaid interest contracted for and twice the amount of any interest paid, can be recovered.

WEST VIRGINIA.

Legal interest, six per cent. Contracts for a greater amount are void as to the excess, but one dollar at least may be charged.

WISCONSIN.

Legal interest, six per cent.; but parties may agree in writing upon a rate not exceeding ten per cent. No interest can be collected on usurious contracts, and, if interest in excess of ten per cent. be paid, treble the amount thereof may be recovered, if sued for within one year.

WYOMING.

Legal interest, eight per cent. Any rate up to twelve per cent. may be agreed upon in writing. Usury forfeits entire interest.

CHAPTER XXV.

THE LAW OF PLACE.

SECTION I.

WHAT IS MEANT BY THE LAW OF PLACE.

IF either of the parties to a contract is not at home, or if both are not at the same home, when they enter into the contract, or if it is to be executed abroad, or if it comes into litigation before a foreign tribunal, then the rights and the obligations of the parties may be affected either by the law of the place of the contract, or by the law of the domicile or home of a party, or by the law of the place where the thing is situated to which the contract refers, or by the law of the tribunal before which the case is litigated. All of these are commonly included in the Latin phrase *lex loci*, or, as the phrase is translated, the Law of Place.

It is obvious that this law must be of great importance wherever citizens of distinct nations have much commercial intercourse with each other. In this country it has an especial and very great importance, from the circumstance that, while the citizens of the whole country have at least as much business connection with each other as those of any other nation, our country is composed of forty-eight separate and independent sovereignties, which are, for most commercial purposes, regarded by the law as foreign to each other.

SECTION II.

THE GENERAL PRINCIPLES OF THE LAW OF PLACE.

THE general principles upon which the law of place depends are four. First, every sovereignty can bind, by its laws, all persons and all things within the limits of the State. Second, no law has any force or authority of its own, beyond those limits. Third, by the comity or courtesy of nations,—aided in our case as to the several States, by the peculiar and close relation between the States, and for some purposes by a constitutional provision,—the laws of foreign States have a qualified force and influence.

The fourth rule is perhaps that of the most frequent application. It is, that a contract which is not valid where it is made is valid nowhere else; and one which is valid where it is made is valid everywhere. Thus a contract made in Massachusetts, and there void because usurious, was sued in New Hampshire and held to be void there, although the law of New Hampshire would not have avoided it if it had been made there. But courts do not take notice of foreign revenue laws, and will enforce foreign contracts made in violation of them. If contracts are made only orally, where by law they should be in writing, they cannot be enforced elsewhere where writing is not required; but if made orally where writing is not required, they can be enforced in other countries where such contracts should be in writing. The rule, that a contract which is valid where it is made is valid everywhere, is applicable to contracts of marriage.

As contracts relate either to movables or immovables, or, to use the phraseology of our own law, to personal property or to

real property, the following distinction is taken. If the contract refers to personal property (which never has a fixed place, and is therefore called, in some systems of law, movable property), the place of the contract governs by its law the construction and effect of the contract. But if the contract refers to real property, it is construed and applied by the law of the place where that real property is situated, without reference, so far as the title is concerned, to the law of the place of the contract. Hence, the title to land can only be given or received as the law of the place where the land is situated requires and determines. And it has been said that the same rule may properly apply to all other local stock or funds, although of a personal nature, or so made by the local law, such as bank stock, insurance stock, manufacturing stock, railroad shares, and other incorporeal property, owing its existence to or regulated by peculiar local laws; and therefore no effectual transfer can be made of such property, except in the manner prescribed by the local regulations. Accordingly, it is held that stock owned by a non-resident is, on his decease, subject to an inheritance tax in the State in which the company was incorporated.

As to the capacity of a person to enter into contracts, it is undoubtedly the general rule, that this is determined by the law of his domicile; and whatever that permits him to do he may do anywhere.

SECTION III.

THE PLACE OF THE CONTRACT.

A CONTRACT is made *when* both parties agree to it, and not before. It is therefore made *where* both parties agree to it, if this is one place. But if the contract be made by letter, or by separate signatures to an instrument, the contract is then made where that signature is put to it, or that letter is written, which in fact completes the contract. But this rule is subject to a very important qualification, when the contract is made in one place, and is to be performed in another place; for then, in general, the law of this last place must determine the force and effect of the contract, for the obvious and strong reason, that parties who agreed that a certain thing should be done in a certain place intended that a thing should be done there which

was lawful there, and therefore bargained with reference to the laws of the place, not in which they stood, but in which they were to act. This principle has been applied to an ante-nuptial contract, and it was held, that when parties marry in reference to the laws of another country as their intended domicile, the law of the intended domicile governs the construction of their marriage contract as to the rights of personal property.

But, for many commercial transactions, both of these rules seem to be in force; or rather to be blended in such a way as to give the parties an option as to what shall be the place of the contract, and what the rule of law which shall apply to it. Thus, a note written in New York, and expressly payable in New York, is, to all intents and purposes, a New York note; and if more than seven per cent. interest was promised, it would be usurious, whatever was the domicile of the parties. If made in New York, and no place of payment is expressed, it is payable and may be demanded anywhere, but would still be a New York note. But if made in New York, but expressly payable in Boston (where any amount of interest may be agreed for), and promised to pay ten per cent. interest, when payment of the note was demanded in Boston, the promise of interest would be held valid. So, if the note were made in Boston, payable in New York, and promised to pay ten per cent. interest, it would not be usurious.

In other words, if a note is made in one place, but is payable in another, the parties have their option to make it bear the interest which is lawful in either place.

If the contract be entered into for money, and is made in one place but is payable at another place on a day certain, and no interest be stipulated, and payment be delayed, interest by way of damages will be allowed, according to the law of the place of payment, where the money may be supposed to have been required by the creditor for use, and where he might be supposed to have borrowed money to supply the deficiency thus occurring, and to have paid the rate of interest of that country. If a note made in New York and payable in Massachusetts were demanded in Massachusetts and unpaid, and afterwards put in suit in Massachusetts, and personal service made on the promisor there, I should say that any interest which it bore should be recovered, provided it were lawful in Massachusetts. And indeed, generally, that such a note being made in good faith, might always bear

any interest lawful where it was payable. But a note made in a State where the law permitted only a low interest, and intended in fact to be paid in that State, but written payable in some State permitting higher interest, merely to get this higher interest, could not by this trick escape the usury laws of the State where it was made, and get the higher interest.

SECTION IV.

DOMICIL.

It is sometimes very important to determine where a person has his domicil, or HOME. In general, it is his residence; or that country in which he permanently resides. He may change it by a change of place *both* in fact and intent, but not by either alone. Thus, a citizen of New York, going to London and remaining there a long time, but without the intention of relinquishing his home in New York, does not lose that home. And, if he stays in New York, his *intention* to live and remain abroad does not affect his domicil until he goes in fact.

He may have his legal domicil in one place and yet spend a very large part of his time in another. But he cannot have more than one domicil. His words or declarations are not the only evidence of his intent; and they are much stronger evidence when against his interest than when they are in his favor. Thus, one goes from Boston to England. If he goes intending not merely to travel, but to change his residence permanently, and not to return to this country unless as a visitor, he changes his domicil from the day that he leaves this country. Let us suppose, however, that he is still regarded by the assessors as residing in Boston, although traveling abroad, and is heavily taxed accordingly. If he can prove that he has abandoned his original home, he escapes from the tax which he must otherwise pay. Now, his declarations that he has no longer a home here, and that his residence is permanently fixed in England, and the like, would be very far from conclusive in his favor, and could indeed be hardly received as evidence at all, unless they were confirmed by facts and circumstances. But if it could be shown that he had constantly asserted that he was still an American, that he had no other permanent residence, no home but that

which he had temporarily left as a traveler, such declarations would be almost conclusive against him. In general, such a question would be determined by all the words and acts, the arrangement of property at home, the length and the character of the residence abroad, and all the acts and circumstances which would indicate the actual intention and understanding of the party.

Two cases have occurred in the city of Boston which illustrate this question. In one, a citizen of Boston, who had been at school in the city of Edinburgh when a boy, and formed a predilection for that place as a residence, and had expressed a determination to reside there if he ever should have the means of so doing, removed with his family to that city in 1836, declaring, at the time of his departure, that he intended to reside abroad, and that, if he should return to the United States, he should not live in Boston. He resided in Edinburgh and vicinity, as a housekeeper, taking a lease of an estate for a term of years, and endeavored to engage an American to enter his family for two years as instructor of his children. Before he left Boston he made a contract for the sale of his mansion-house and furniture there, but shortly afterward procured said contract to be annulled (assigning as his reason therefor, that, in case of his death in Europe, his wife might wish to return to Boston), and let his house and furniture to a tenant. Held, that he had changed his domicile, and was not liable to taxation as an inhabitant of Boston in 1837. In the other case, a native inhabitant of Boston, intending to reside in France with his family, departed for that country in June, 1836, and was followed by his family about three months afterwards. His dwelling-house and furniture were leased for a year, and he hired a house for a year in Paris. At the time of his departure he intended to return and resume his residence in Boston, but had not fixed on any time for his return. He returned in about sixteen months, and his family in about nine months afterwards. Held, that he continued to be an inhabitant of Boston, and that he was rightly taxed there during his absence, for his person and personal property. This last case was distinguished from the former by the different intent of the parties upon their departure from home.

It is a general rule, that, if one has a domicile, he retains it until he acquires another. Thus, if a seaman, without family

or property, sails from the place of his nativity, which may be considered his domicil of origin, although he may return only at long intervals, or even be absent for many years, yet, if he does not, by some actual residence or other means, acquire a domicil elsewhere, he retains his domicil of origin.

It seems to be agreed that one may dwell for a considerable time, and even regularly during a large part of the year, in one place, or even in one State, and yet have his domicil in another.

A woman marrying takes her husband's domicil, and changes it with him. A minor child has the domicil of his father, or of his mother if she survives his father; and the surviving parent, with whom a child lives, by changing his or her own domicil in good faith, changes that of the child. And even a guardian has the same power.

CHAPTER XXVI.

THE LAW OF SHIPPING.

SECTION I.

THE OWNERSHIP AND TRANSFER OF SHIPS.

THE Law of Shipping may be considered under three divisions. First, as to ownership and transfer of ships. Second, as to the employment of ships as carriers of goods, or of passengers, or both. Third, as to the navigation of ships. I begin with the first topic.

Ships are personal property; or, in other words, a ship is a chattel; and yet its ownership and transfer are regulated in this country by rules quite analogous to those which apply to real property.

The Constitution of the United States gives to Congress the power to enact laws for the regulation of commerce. In execution of this power, acts were passed in 1792, and immediately after, which followed substantially the Registry and Navigation

Laws of England, some of which had been in force about a century and a half. The English laws were intended to secure English commerce to English men and English ships; and it was supposed that the commercial prosperity of England was in a great measure due to them. The laws on this subject now in force will be found in the Revised Statutes of the United States, § 4,131 *et seq.*

To secure the evidence of the American character of a vessel, the statutes provide for an exact system of registration in the custom-house. There is no *requirement* of registration. The law does not say that a ship shall or must be registered, but that certain ships or vessels may be; and, if they are registered, they shall have certain privileges. And the disadvantage of being without registry operates as effectually to make registration universal, as a positive requirement with a heavy penalty could do.

Vessels entitled to registration are: those built within the United States and belonging wholly to citizens thereof; vessels which may be captured in war by citizens of the United States, and lawfully condemned as prize or adjudged forfeited for breach of laws of the United States; and seagoing vessels wherever built which are to engage only in trade with foreign countries or with the Philippines and Island of Guam and Tutuila, and owned wholly by citizens of the United States, or corporations organized and chartered under the laws of the United States or of any State, the president and managing directors of which are citizens of the United States.

Every such vessel must be commanded by a citizen of the United States; and all officers who have charge of a watch, including pilots, and including also the chief engineer and assistant engineers of steam vessels, must also be citizens of the United States, either native born or naturalized; but this provision as to watch officers may be suspended by the President whenever the needs of foreign commerce may so require.

If a registered American ship be sold or transferred, in whole or in part, to an alien, the certificate of registry must be delivered up, or the vessel is forfeited; but if, in case of a sale in part, it can be shown that any owner of a part not so sold was ignorant of the sale, his share shall not be subject to such forfeiture. As soon as a registered vessel arrives from a foreign

port, her documents must be deposited with the collector of the port of arrival; and the owner, or if he does not reside within the district, the master, must make oath that the register contains the names of all persons who are at that time owners of the ship, and at the same time report any transfer of the ship, or of any part, that has been made within his knowledge since the registry; and also declare that no foreigner has any interest in the ship. If a register be issued fraudulently, or with the knowledge of the owners, for a ship not entitled to one, the register is not only void, but the ship is forfeited. If a new register is issued, the old one must be given up; but where there is a sale by process of law, and the former owners withhold the register, the Secretary of the Treasury may authorize the collector to issue a new one. If a ship be transferred while at sea, or abroad, the old register must be given up, and all the requirements of law, as to registry, etc., must be complied with, within three days after her arrival at the home port.

Important exclusive privileges have been granted to registered vessels of the United States. Some of these, relating to foreign commerce, have since been withdrawn, but Rev. Stat. of U. S., § 4347, still provides that no merchandise shall be carried from port to port in the United States, by any foreign vessel, unless it formed a part of its original cargo.

A ship that is of twenty tons burden, to be employed in the fisheries, or in the coasting trade, need not be registered, but must be enrolled and licensed accordingly. If under twenty tons burden, she need only be licensed. If licensed for the fisheries, she may visit and return from foreign ports, having stated her intention of doing so, and being permitted by the collector. And if registered, she may engage in the coasting trade or fishery, and if licensed and enrolled, she may become a registered ship, subject to the regulations provided for such cases.

A ship that is neither registered nor licensed and enrolled can sail on no voyage with the privilege or protection of a national character or national papers. If she engages in foreign trade, or the coasting trade, or fisheries, she is liable to forfeiture; and if she have foreign goods on board, must at all events pay the tonnage duties leviable on foreign ships. In

these days, no ship engaged in honest business, and belonging to a civilized people, is met with on the ocean, without having the regular papers which attest her nationality, unless she has lost them by some accident.

SECTION II.

TRANSFER OF PROPERTY IN A SHIP.

REVISED STATUTES, § 4170, provides that "in every case of sale or transfer, there shall be some instrument in writing, in the nature of a bill of sale, which shall recite at length the said certificate; otherwise the said ship or vessel shall be incapable of being registered anew." It follows, therefore, that a merely oral transfer, although for valuable consideration, and followed by possession, gives the transferee no right to claim a new register setting forth his ownership. But this is all. There is nothing in this statute to prevent the property from passing to and vesting in such transferee. It is, however, unquestionably a principle of the maritime law generally, that the property in a ship should pass by a written instrument. And as this principle seems to be adopted by the statute, the courts have sometimes almost denied the validity of a merely parol transfer. The weight of authority and of reason is, however, undoubtedly in favor of the conclusion stated by Judge Story, that "the registry acts have not, in any degree, changed the common law as to the manner of transferring this species of property." It would follow, therefore, that such transfer would be valid, and would pass the property.

Rev. Stat., § 4192, provides "that no bill of sale, mortgage, hypothecation, or conveyance of any vessel or part of any vessel of the United States, shall be valid against any person other than the grantor or mortgagor, his heirs and devisees, and persons having actual notice thereof; unless such bill of sale, mortgage, hypothecation, or conveyance be recorded in the office of the collector of the customs where such vessel is registered or enrolled." Then follows an exception in favor of liens by bottomry, and in subsequent sections are provisions for recording by the collector, and giving certificates, etc.

As a ship is a chattel, a transfer of it should be accompanied by a delivery of possession. Actual delivery is sometimes impossible where a ship is at sea; and the statute of 1850 makes the record of the transfer equivalent to change of possession. If there be no record, possession should be taken as soon as possible; and prudence would still require the same course in case of transfer by writing and record.

By the word "ship," and still more by the phrase "ship and her appurtenances," or "apparel," or "furniture," everything would pass which was distinctly connected with the ship, and is on board of her, and fastened to her if that be usual, and needed for her navigation or for her safety. Kentledge, a valuable kind of permanent ballast, has been held to pass with the ship; so have a rudder and cordage prepared for a vessel, but not yet attached to her, and not quite finished; and so would a boat, anchors, etc., generally. But the answer to the question, What is part of the ship? must always depend somewhat upon the words of the instrument, and upon the circumstances of the case and the intention of the parties.

A sale by the decree of any regular court of admiralty, with due notice to all parties, and with proper precautions to protect the interest of all, and to guard against fraud or precipitancy, would undoubtedly be acknowledged by courts of admiralty of every other nation as transferring the property effectually.

SECTION III.

PART-OWNERS.

Two or more persons may become part-owners of a ship, in either of three ways. They may build it together, or join in purchasing it, or each may purchase his share independently of the others. In either case their rights and obligations are the same.

If the register, or the instrument of transfer, or other equivalent evidence, do not designate specific and unequal proportions, they will be presumed to own the ship in equal shares.

Part-owners are not necessarily or usually partners. But a ship, or any part of a ship, may constitute a part of the stock or capital of a copartnership; and then it will be governed, in all respects, by the law of partnership.

A part-owner may at any time sell his share to whom he will. But he cannot sell the share of any other part-owner, without his authority. If he dies, his share goes to his representatives, and not to the surviving part-owners.

A majority of the part-owners may, generally, manage and direct the employment of the property at their discretion. But a court of admiralty will interfere and do justice between them, and prevent either of the part-owners from inflicting injury upon the others.

One part-owner may, in the absence of the rest, and without prohibition from them, manage the ship, as for himself and for them. And the contracts he enters into, in relation to the employment or preservation of the ship, bind all the part-owners in favor of an innocent third party.

Formerly all the part-owners were liable, but by act of Congress of June 26, 1884, it is now provided "that the individual liability of a ship-owner shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessel and freight pending. Provided, that this provision shall not affect the liability of any owner incurred previous to the passage of this act, nor prevent any claimant from joining all the owners in one action; nor shall the same apply to wages due to persons employed by said ship-owners."

If it can be clearly shown, however, that especial credit was given, and intended to be given, to one part-owner personally, to the exclusion of the others, then the others cannot be holden. If the goods were charged up to "ship" so and so, or to "ship and owners," this would tend strongly to show that it was intended to supply the goods on the credit of all the owners. If charged to some one owner alone, this would not absolutely prove that credit was intentionally given to him exclusively. But it would raise a presumption to that effect which could be rebutted only by showing that no other owner was known; or by some other evidence which disproved the intention of discharging the other part-owners.

So, if the note, negotiable or otherwise, of one part-owner were taken in payment, if the promisor refused to pay, the others

would be liable, unless they could show a distinct bargain by which they were exonerated.

Commonly, the "ship's husband," as the agent of all the owners for the management of the ship has long been called, is one of the part-owners. He may be appointed in writing or otherwise. His duties are, in general, to provide for the complete equipment and repair of the ship, and take care of her while in port; to see that she is furnished with all regular and proper papers; to make proper contracts for freight or passage, and collect the receipts and make the disbursements proper on these accounts. For these things he has all the necessary powers. But he cannot, without special power, insure for the rest, nor buy a cargo for them, nor borrow money, nor give up their lien on the cargo for the freight, nor delegate his authority.

Where he acts within his powers, a ship's husband binds all his principals, that is, all the part-owners. But a third party may deal with him on his personal credit alone; and if the part-owners, believing this, and authorized to believe it by any acts or words of the third party, settle their accounts with the ship's husband accordingly, this third party cannot now establish a claim against them to their detriment. If a ship's husband is not a part-owner, all the part-owners are liable to him, each for the whole amount. If he is a part-owner, each of the others is liable to him for his share of the expense incurred. The "ship's husband" is called in the Statutes of the United States the "managing owner."

SECTION IV.

THE LIABILITY OF MORTGAGEES.

A MORTGAGEE of a ship, who is in possession, is, in general, liable for supplies, repairs, etc., in the same way as an owner. But if he has not taken possession, he is not liable for supplies or repairs merely on the ground that his security is strengthened by whatever preserves or increases the value of the vessel. Nor can he be made liable, except by some act or words of his own, which show that credit was *properly* given to him, or that he has come under a valid engagement to assume this responsibility.

SECTION V.

THE CONTRACT OF BOTTOMRY.

By this contract, a ship is hypothecated (which means pledged) as security for money borrowed. The form of this contract varies in different places, and, indeed, in the same place. Its essentials are:—First, that the ship itself is bound for the payment of the money. Second, that the money is to be repaid only in case the ship performs a certain voyage, and arrives at its destined termination in safety; or, as it is sometimes provided in modern bottomries, in case that the ship is in safety on a certain day; therefore, if the ship is lost before the termination of the voyage or the expiration of the period, no part of the money is due, or, as is sometimes said, the whole debt is paid by the loss. As the lender thus consents that the repayment of the money shall depend upon the safety of the ship, he has a legal right to charge “marine interest,” which means as much more than legal interest as will serve to cover his risk.

The lender may require, and the borrower pay, this marine interest, which may be much more than lawful interest, on a bottomry bond, without usury.

If the interest be not expressed in the contract, it will generally be presumed to be meant and included in the sum named as principal.

If, by the contract, the lender takes more than legal interest and yet the money is to be paid to him whether the ship be lost or not, this is not a contract of bottomry, and it is subject to all the consequences of usury. But the lender may take security for his debt and marine interest, additional to the ship itself, provided the security is given, like the ship itself, to make the payment certain when it becomes due by the safety of the ship, but is wholly avoided if the ship be lost; for then the lender takes the risk of losing the whole, principal and interest, by the loss of the ship, and may therefore charge more than simple interest.

The most common contracts of bottomry are those entered into by the master in a foreign port, where money is needed and cannot otherwise be obtained. Therefore the security goes with

the ship, and the debt may be enforced, as soon as it is payable, against the ship, wherever the ship may be. But in this country, these contracts are frequently made by the owner himself, in the home port.

If the money is payable at the end of a certain voyage, and the owner or his servant, the master of the ship, terminate the voyage sooner,—either honestly, from a change in their plan, or dishonestly, by intentional loss or wreck,—the money becomes at once due.

A bottomry bond made abroad would override all other liens or engagements, except the claim for seamen's wages, and the lien of material-men for repairs, and supplies indispensable to the safety of the vessel. The reason is, that a bottomry bond is supposed to be made from necessity, and to have provided the only means by which the ship could be brought home. For the same reason, a later bond is sustained as against an earlier; and the last against all before it.

The lien of bottomry depends in no degree on possession, for the ship may go all over the world with the bottomry security attached to her; but the lender ought to collect the sum due, and so discharge the bond, as soon as he conveniently can; and therefore an unreasonable delay in enforcing it will destroy the lien; and any connivance by the lender at any fraud on the part of the master avoids the bond entirely.

SECTION VI.

THE EMPLOYMENT OF A SHIP BY THE OWNER.

AN owner of a ship may employ it in carrying his own goods, or those of another. He may carry the goods of others, while he himself retains the possession and direction of the ship; or he may lease his ship to others, to carry their goods. In the first case, he carries the goods of others *on freight*; in the second, he lets his ship *by charter-party*. We shall consider first the carriage of goods on freight.

He may load his ship as far as he can with his own goods, and then take the goods of others to fill the vacant space; or he may put up his ship as "a general ship," to go from one stated port to another and to carry the goods of all who offer.

It may be remarked, that the word "freight" is used in different ways; sometimes to designate the goods or cargo that is carried; sometimes to denote the money which the shipper of the goods pays to the owner of the ship, for their transportation. Not infrequently, when the word is used in this latter sense, the word "money" is added, and the phrase "freight-money" leaves no question as to what is meant. Sometimes a ship-owner who lets the whole burden of his ship to another is said to carry the shipper's goods on freight. But the most common meaning of the word, especially in law proceedings, is the money earned by a ship not chartered for the transportation of the goods; and in this sense we shall use it.

Nearly the whole law of freight grows out of the ancient and universal principle that the ship and the cargo have reciprocal duties or obligations towards each other, and are reciprocally pledged to each other for the performance of these duties. In other words, not only is the owner of the ship bound to the owner of the cargo, as soon as he receives it, to lade it properly on board, take care of it while on board, carry it in safety (so far as the seaworthiness of the ship is concerned) to its destined port, and there deliver it, all in a proper way, but the ship itself is bound to the discharge of these duties. That is to say, if, by reason of a failure in any of these particulars, the shipper of the goods is damnified, he may look to the ship-owner for indemnity; but he is not obliged to do so, because he may proceed by proper process against the ship itself. This lien, like that of bottomry, is not dependent upon possession, but will be lost by delay, especially if the vessel passes into the hands of a purchaser for value without notice. On the other hand, if the ship discharges all its duties, the owner may look to the shipper for the payment of his freight; but is not obliged to do so, because he may keep his hold upon the goods, and refuse to deliver them until the freight is paid.

The party who sends the goods may or may not be the owner of them. And he may send them either to one who is the owner, for whom the sender bought them, or to one who is only the agent of the owner. In either of these cases, the sender is called the consignor of the goods, and the party to whom they are sent is called the consignee. The sending them is called the

consigning or the consignment of them; but it is quite common to hear the goods themselves called the consignment.

The rights and obligations of the ship-owner and the shipper are stated generally in an instrument of which the origin is lost in its antiquity, and which is now in universal use among commercial nations, with little substantial variety of form. It is called the Bill of Lading. It should contain the names of the consignor, of the consignee of the vessel, of the master, of the place of departure, and, of the place of destination; also the price of the freight, with primage and other charges, if any there be, and either in the body of the bill or in the margin, the marks and numbers of the things shipped, with sufficient precision to designate and identify them.

It should be signed by the master of the ship, who, by the strict maritime law, has no authority to sign a bill of lading until the goods are actually on board. There is some relaxation of this rule in practice; but it should be avoided.

Usually one copy is retained by the master, and three copies are given to the shipper; one of them he usually retains, another he sends to the consignee with the goods, and the other he sends to the consignee by some other conveyance.

The delivery of the goods promised in the bill is to the consignee, or his assigns; and the consignee may designate his assigns by writing on the back of the bill, "Deliver the within-named goods to A B," and signing this order; or the consignee may indorse the bill with his name only in blank, and any one who acquires an honest title to the goods and to the bill may write over the signature an order of delivery to himself. The consignee has this power, if such be the usage, even if the word "assigns" be omitted. Such indorsement not only gives the indorsee a right to demand the goods, but makes him the owner of the goods.

As the bill of lading is evidence against the ship-owner as to the reception of the goods, and their quantity and quality, it is common to say "contents unknown," or "said to contain," etc. But without any words of this kind, the bill of lading is not conclusive upon the ship-owner in favor of the shipper, because he may show that its statements were erroneous through fraud or mistake. But the ship-owner, or master, is bound much more

strongly by the words of the bill of lading, in favor of a third party, who has bought the goods for value and in good faith, on the credit of the bill of lading. In a case which occurred in New York, the court said, that, as between the shipper of the goods and the owner of the vessel, a bill of lading may be explained or corrected as far as it is a receipt; that is, as to the quantity of the goods shipped, and the like; but as between the owner of the vessel and an assignee of the bill, for a valuable consideration, paid on the strength of the bill of lading, it may not be explained or corrected; because the master, by signing the bill, authorizes the purchaser to believe the goods are what the bill says they are.

The law-merchant gives to the ship, as we have seen, a lien on the goods for the freight. The master cannot demand the freight without a tender of the goods at the proper time, in the proper way, to the proper person, and in a proper condition; but then the consignee is not entitled to the goods without paying freight. The law gives this lien, whether it be expressed or not. But it may be expressly waived. The bill of lading, or other evidence, may show the agreement of the parties that the goods should be delivered first, and the freight not be payable until a certain time afterwards; and such an agreement is in general a waiver of the lien.

Nevertheless, if it seemed that the ship-owner did not intend to give up his security on the goods, a court of admiralty would so construe such an agreement as to give the consignee possession of the goods, for a temporary purpose, as to ascertain their condition, or, possibly, that he might offer them in the market, and by an agreement to sell raise the means of paying the freight; and yet would preserve the master his security upon the goods for a reasonable time, unless, in the meantime, they should actually become, by sale, the property of a *bona fide* purchaser.

The contract of affreightment is entire; therefore no freight is earned unless the whole is earned, by carrying the goods quite to the port of destination. If by wreck, or other cause, the transportation is incomplete, no absolute right of freight goes out of it. We say no absolute right, because a conditional right of freight does exist. To understand this we must remember, that, as soon as the ship receives the goods, it, on

the one hand, comes under the obligation of carrying them to their destination, and on the other, at the same time or on breaking ground and beginning the voyage, acquires the right of so carrying them. Therefore, if a wreck or other interruption intervenes, the ship-owner has the right of trans-shipping them, and sending them forward in the original ship or another ship, to the place of their original destination. When they arrive there, he may claim the whole freight originally agreed on; but if forwarded in the original ship, he can claim no more; for then the extra cost of forwarding the goods is his loss. If the master or owner of the ship forwards them in another ship from necessity, and at an increased cost, the shipper must pay this increased cost.

The ship-owner not only may, but must, send forward the goods, at his own cost, if this can be done by means reasonably within his reach. He is not, however, answerable for any delay thus occurring, or for any damage from this delay. The shipper himself, by his agent, may always reclaim all his goods, at any intermediate port or place, on tendering all his freight; because the master's right of sending them forward is merely to earn his full freight. If, therefore, the goods are damaged and need care, and the master can send them forward at some time within reasonable limits, and insists upon his right to do so, the shipper can obtain possession of his goods only by paying full freight. If, however, the master tenders the goods there to the shipper, and the shipper there receives them, this is held to sever or divide the contract by agreement, and now what is called a freight *pro rata itineris*, or for that part of the voyage which is performed, is due. This is quite a common transaction.

If freight for a part of the voyage is payable, the question arises by what rule of proportion shall it be measured. One is purely geographical, and formerly much used; that is, the whole freight would pay for so many miles, and the freight for a part must pay for so many less. Another is purely commercial. The whole freight being a certain sum for the whole distance, what will it cost to bring the goods to the place where they are received, and how much to take them thence to their original destination. Let the original freight be divided into two parts proportional to these, and the first part is the freight for the part of the voyage through which they were carried, or,

as it is called, the freight *pro rata*, and is to be paid by the shipper who receives the goods. Neither of these, nor indeed any other fixed and precise rule, is generally adopted in this country. But both courts and merchants seek, by combining the two, to ascertain what proportion of the increase of value expected from the intended transportation has been actually conferred upon the goods by actual partial transportation, and this is to be taken as the freight that is due *pro rata itineris*.

If the bill of lading requires delivery to the consignee or his assigns, "he or they paying freight,"—which is usual,—and the master delivers the goods without receiving freight, which the consignee fails to pay, the master or owner cannot in the absence of express contract fall back on the consignor and make him liable, unless he can show that the consignor actually owned the goods, or by his words or acts made himself responsible therefor; in which case the bill of lading, in this respect, is nothing more than an order by a principal upon an agent to pay money due from the principal.

Under the usual bill of lading the goods are to be delivered to the consignee or his assigns on the payment of freight. If goods are accepted under this bill of lading, the party receiving them, whether the consignee or his assignee, becomes liable for the freight. If the master delivers goods to any one, saying that he shall look to him for the freight, he may demand the freight of him unless that person had the absolute right to the goods without payment of freight; which must be very seldom the case. If the consignee is not liable for the freight, his indorsement of the bill of lading does not make him so. And if the consignee is liable, and the goods are received by any one only as agent of the consignor, this agent does not thereby become liable.

If freight be paid in advance, and not subsequently earned, it must be repaid, unless it can be shown that the owner took a less sum for ready cash than he would otherwise have had, and for this or some other equivalent reason the money paid was as a final settlement, and was to be retained by the owner at all events.

If a consignee pay more than he should, he may recover it back, if paid through ignorance or mistake of fact; but not if,

with full knowledge of all the facts, he was ignorant or mistaken as to the law.

If one sells his ship after a voyage is commenced, he alone can claim the freight of the shipper of goods, although by the contract of sale the seller is to pay it over to the purchaser. A mortgagee of a ship who has not taken possession, has not, in general, any right to the freight, unless this is specially agreed. Neither has a lender on a bottomry bond.

No freight, of course, can be earned by an illegal voyage, as the law will not enforce any illegal contract, or sanction any illegal conduct.

The goods are to be delivered, by the bill of lading, in good condition, "excepting the dangers of the seas," and such other risks or perils as may be expressed. If the goods are damaged to any extent by any of these perils, and yet can be and are delivered *in specie* (that is, if the goods are actually delivered although hurt or spoilt, as corn or hides although rotten, flour although wet, fish although spoilt), the freight is payable.

The shipper or consignee cannot abandon the goods for the freight, if they remain *in specie*, although they may be worthless; for damage caused by an excepted risk is his loss, and not the loss of the owner. If they are lost by a risk which the ship-owner does not except in the bill of lading, he is answerable for that loss, and it may be charged in settlement of freight.

If they are lost in substance, though not in form, that is, although the cases or vessels are preserved, as if sugar is washed out of boxes or hogsheads, or wine leaks out of casks, by reason of injury sustained from a peril of the sea, though the master may deliver the hogshead or boxes or casks, this is not a delivery of the sugar or of the wine, and no freight is due.

If the goods are injured, or actually perish and disappear from internal defect or decay or change, that is, from causes inherent in the goods themselves, with no fault of the master, freight is due. But if it can be shown that the loss or injury might have been avoided by the use of proper precautionary measures, and that the usual and customary methods for this purpose have been neglected, the master or ship-owners may be held liable for the damage.

If they are lost from the fault of the ship-owner, the master, or crew, the ship-owner must make the loss good; but in this

case may have, by way of offset or deduction, his freight, because the shipper is entitled to full indemnification, but not to make a profit out of this loss. If goods are delivered although damaged and deteriorated from faults for which the owner is responsible, as bad stowage, deviation, negligent navigation, or the like, freight is due; the amount of the damage being first deducted.

The rules in respect to passage-money are quite analogous to those which regulate the payment of freight. Usually, however, the passage-money is paid in advance. But it is not earned except by carrying the passenger, or *pro rata*, by carrying him only a part of the way with his consent. And if paid in advance, and not earned by the fault of the ship or owner, it can be recovered back.

SECTION VII.

CHARTER-PARTIES.

THE owner may let his ship to others, and the written instrument by which this is done is called by an ancient name, a Charter-Party. The form of this instrument varies considerably, because it must express the bargain between the parties, and this of course varies with circumstances and the pleasure of the parties. An agreement to make and receive a charter, though not itself equivalent to a charter, will, if the purposes of the proposed charter are carried into effect, be considered as evidence that such a charter was made and completed.

Generally, only the burden of the ship is let, the owner holding possession of her, finding and paying her master and crew and supplies and repairs, and navigating her as is agreed upon. Sometimes, however, the owner lets his ship as he might let a house, and the hirer takes possession, mans, navigates, supplies, and even repairs her.

In the latter case, bills of lading are not commonly given by the ship-owner to the hirer; but if the hirer takes the goods of other shippers, bills of lading are given by him to them. In the former case, which we have said is much more common, bills of lading are usually given by the ship-owner to the charterer (or hirer), as they are in the case of a general ship. They are then, however, little more than evidence of the delivery and

receipt of the goods, for the charter-party is the controlling contract as to all the terms or provisions which it expresses. The master is not authorized to sign bills promising to carry and deliver the goods for less freight than has been stipulated for. And if he signs such bills, and goods are shipped by the charterer, neither the charterer nor any person shipping the goods with a knowledge of the charter-party could defend, on account of the bills of lading, against the owner's claims under the charter-party.

There is no particular form required for a charter-party. It should, however, designate particularly the ship, the voyage, the master, and the parties; should describe the ship generally, and particularly as to her tonnage or capacity; should designate especially what parts of the ship are let, and what parts, if any, are reserved to the owner, or to the master, to carry goods, or for the purpose of navigation; should describe the voyage, or the period of time for which the ship is hired, with proper particularity; should set forth the lay-days, the demurrage, the obligation upon either party to man, navigate, supply, and repair the ship, and all other particulars of the bargain, for this is a written instrument of an important character, and cannot be *varied* by any external evidence. Finally, it should state, distinctly and precisely, how much is to be paid for the ship,—whether by ton, and if so, whether by ton of measurement or ton of capacity of carriage, or in one gross sum for the whole burden,—and when the money is payable, and how; that is, in what currency or at what exchange, especially if it be payable abroad. The charter-party usually binds the ship and freight to the performance of the duties of the owner, and the cargo to the duties of the shipper. But the law-merchant would create this mutuality of obligation if it were not expressed.

If the hirer takes the whole vessel, he may put the goods of other shippers on board (unless prevented by express stipulation); but whether he fills the whole ship or not, he pays for the whole; and what he pays for so much of the ship as is empty is said to be paid for dead freight; and if the master brought back the cargo because it could not be disposed of, the owner of the cargo would pay freight for bringing it back, although the charter-party said nothing about a return cargo. The freight is calculated on the actual capacity of the ship, unless she is agreed

to be of a specified tonnage. If either party is deceived or defrauded by any statement in the charter-party, he has, of course, his remedy against the other party.

If a charterer takes the goods of other shippers, payment by one of them to the master or ship-owner is a good defense against the claim of the charter against him, for so much as the charterer was bound to pay the owner, but no more.

The voyage may be a double one; a voyage out, and then a voyage home; or a voyage to one port, and thence to another. The question sometimes arises, whether any freight is payable if the ship arrives in safety out, and delivers her cargo there, and is lost on her return with the cargo that represents the cargo out. Of course, the parties may make what bargain they please, and the law respects it; but in the absence of an agreement on this point, the courts would generally consider each voyage, at the termination of which goods are delivered, as a voyage by itself, earning its own freight.

As time has become of the utmost importance in commercial transactions, both parties to this contract should be punctual, and cause no unnecessary delay; and for such delay the party injured would have his remedy against the party in fault. The charter-party usually provides for so many "lay-days," and for so much "demurrage." Lay-days, or working-days, are so many days which the charterer is allowed, without paying for them, or paying only a small price, for loading or for unloading the vessel. These lay-days are counted from the arrival of the ship at her dock, wharf, or other place of discharge, and not from her arrival at her port of destination, unless otherwise agreed on by the parties; and the usage of the port is often adverted to, to determine the place and manner of loading. In the absence of any custom or bargain to the contrary, Sundays are computed in the calculation of lay-days at the port of discharge, but if the contract specifies "working lay-days," Sundays and holidays are excluded. If more time than the agreed lay-days is occupied, it must be paid for; and "demurrage" means what is thus paid. Usually, the charterer agrees to pay so much demurrage a day. If he agrees only to pay demurrage, without specifying the sum, or if so many working days are agreed on, and nothing more is said, it would, generally, be considered that the number of lay-days determined what was a reasonable and

proper delay, and that for whatsoever was more than this the party in fault must pay a reasonable indemnity.

If time be occupied in the repairs of the ship, which become necessary without the fault of the ship-owner or master, or of the ship itself, that is, if they do not arise from her original unseaworthiness, the charterer pays during this time. The charterer or hirer must not abandon the vessel while he can keep her afloat, and suitably provided for the employment and destination for which he was hired; and the ship-owner must be ready to pay all expenses and damages necessarily incurred for the purpose. But the charterer will not be bound by the charter-party to wait for the repair, unless the vessel can be repaired within a reasonable time.

Many cases have arisen where the ship was delayed by different causes, and the question occurred, which party should pay for the time thus lost. I should say that no delay arising from the elements, as from ice, or tide, or tempest, or from any act of government, or from any real disability of the consignee which could not be imputed to his own act, or to his own wrongful neglect, would give rise to a claim on the charterer for demurrage.

Demurrage seems essentially due only for the fault or voluntary act of the charterer; but if he hires at so much on time, that is, by the day, week, or month, then, if the vessel be delayed by seizure, embargo, or capture, and the impediment is removed, and the ship completes her voyage, the charterer pays for the whole time. If she be condemned, or otherwise lost, this terminates the voyage and the contract.

The contract may be dissolved by the parties, by mutual consent, or against their consent by any circumstance which makes the fulfillment of the contract illegal; as, for example, by a declaration of war, on the part of the country to which the ship belongs, against that to which she was to go. So, either an embargo, or an act of non-intercourse, or a blockade of the port to which the ship was going, may either annul or suspend the contract of charter-party. And we should say they would be held to suspend only, if they were temporary in their terms, and did not require a delay which would be destructive of the purposes of the voyage.

SECTION VIII.

GENERAL AVERAGE.

WHICHEVER of the three great mercantile interests—ship, freight, or cargo—is voluntarily lost or damaged for the benefit of the others, if the others receive benefit therefrom, they must contribute ratably to the loss. That is to say, such a loss is *averaged* upon all the interests and property which derive advantage from it. The phrase “general average” is used, because a loss of a part is thus divided among all the other parts, and is sustained by all in equal proportion. This rule is ancient and universal. It would be held to apply to all our inland navigation, whether of river or lake, steam or canvas.

There are three essentials in general average without the concurrence of all of which there can be no claim for a loss. First, the sacrifice must be voluntary; second, it must be necessary; third, it must be successful. Or, in other words, there must be a common danger, a voluntary loss, and a saving of the imperiled property by that loss.

The loss must not only be voluntary, but, what is indeed implied in its being voluntary, it must be for the purpose and with the intention of saving something else. And this intention must be carried into effect; for only the interest or property which is actually saved can be called on to contribute for that which was lost.

The reason of what has been said must be distinctly understood, because the whole law of general average rests upon it. It is simply this; if any man's property be destroyed for the benefit of his neighbors, they who are helped by his loss ought to make up his loss. The law supposes that all who are interested in the ship or the cargo, or any part of either, agree together beforehand, that, if a sacrifice of a part can save the rest, that sacrifice shall be made, without stopping to ask who it is that suffers in the first place; and that afterwards, if the sacrifice be beneficial to any for whom it was made, such persons shall bear their share of it, by contributions to him whose property was purposely destroyed for their good. And their contributions shall be in proportion to the value of the property saved for them by the sacrifice.

Any loss which comes within this reason is an average loss; as ransom paid to a captor or pirate: not so, however, if he take what he will, and leave the ship and the rest; for this there is no contribution. So, cutting away bulwarks or the deck, to get at goods for jettison, is an average loss. As is also the cutting away of the masts and rigging, or throwing overboard a boat to relieve the ship, or the loss of a cable and anchor, or either, by cutting the cable to avoid an impending peril. So is a damage which, though not intended, is the direct effect and consequence of an act which was intended; as, where a mast is purposely cut away, and by reason of it water gets into the hold, and damages a cargo of corn, this damage is as much a general average as the loss of the mast.

But if a ship makes all sail in a violent gale to escape a lee shore, and so saves ship and cargo, but carries away her spars, etc.; or if an armed ship fights a pirate or enemy, or beats him off at great loss; the first is a common sea-risk, the second a common war-risk, and neither of them is a ground for average contribution.

It is not considered prudent to lade goods on deck, because they are not only more liable to loss there, but hamper the vessel, and perhaps make her top-heavy, and increase the common danger for the whole ship and cargo. Therefore, by the general rule, if goods on deck are *jettisoned* (which old mercantile word means cast overboard), they are not to be contributed for. But there are some voyages on which there is a known and established usage to carry goods of a certain kind on deck. This justifies the carrying them there, and then the jettison of them would entitle the owner to contribution.

The repairs of a ship are for the benefit of the ship itself. But if a ship be in a damaged condition, at a port where she cannot be permanently repaired, and receive there a temporary repair, which enables her to proceed to another port where she may have a thorough repair, and thereby the voyage is saved, the cost of all of the first repair which was of no further use than to make the permanent repair possible, is to be contributed for by ship, freight, and cargo, because all these were saved by it.

If a ship put into a port for necessary repair, and receive it, and the voyage is by reason thereof successfully prosecuted, the

wages and provisions of the crew, from the time of putting away for the port, the expense of loading and unloading, and every other necessary expense arising from this need of repair, are an average.

As to the expenses, wages, etc., during a capture, or a detention by embargo, the claim for contribution is limited to those expenses which are necessarily and successfully incurred in saving or liberating the property.

The loss or sacrifice must be necessary or justified by a reasonable probability of its necessity and utility.

An "Adjustment of Average" means an account stated, which exhibits accurately all the losses to be contributed for, and all the property or interests bound to contribute, and all the persons entitled to receive contribution, and the amounts they should each receive, and all persons bound to pay contribution, and the amounts they should each pay.

It is the master's duty to have an average adjustment made at the first port of delivery at which he arrives. And an adjustment made there, especially if this be a foreign port, is generally held to be conclusive upon all parties. For the purpose of this rule, our States are foreign to each other; as they are indeed for most purposes under the Law of Admiralty, or the Law of Shipping. And we should state the rule to be that an adjustment, when properly made, according to the law of the port where it is made, is binding everywhere. But a foreign adjustment might doubtless be set aside or corrected, for fraud or gross error.

The master has the right of refusing delivery of the goods, until the contribution due from them on general average is paid to him. That is, he cannot hold the whole cargo, if it belong to different consignees, until the whole average is paid; but he may hold all that belongs to each consignee, until all that is due from that consignee is paid. And the master may retain public property belonging to the United States until the average contribution due upon it has been paid.

As the purpose of average and contribution is to divide the loss proportionately over all the property saved by it, the whole amount which any one loses is not made up to him, but only so much as will make his loss the same percentage as every other party suffers. Thus, if there be four shippers, and each

has on board \$5,000, and the ship is worth \$15,000, and the freight \$5,000, and all the goods of one shipper are thrown over, and everything else saved; now the whole contributing interest is \$40,000, and the loss, which is \$5,000, is one-eighth of this contributory interest. The shipper whose goods are jettisoned therefore loses one-eighth of his goods, and the remaining seven-eighths are made up to him, by each owner of property saved giving up one-eighth.

There are usually in every commercial place persons whose business it is to make up Adjustments. With us this work is generally done by insurance brokers.

SECTION IX.

SALVAGE.

IN the Law of Shipping and the usage of merchants, the word "salvage" has two quite different meanings. If a ship or cargo meets with disaster, and the larger part is destroyed or lost, and a part be saved, that which is saved is called the "salvage." Thus, if a ship be wrecked, and sold where she lies because she cannot be got off, her materials, wood and metal, her spars, sails, cordage, boats, and everything else about her which has any value, constitute the "salvage." And all of this, or the proceeds of it if it be sold by the master, belong to the owner or to the insurer, accordingly as circumstances may indicate; and this question will be considered in the chapter on the Law of Insurance.

Besides this, which is the primary meaning of the word, salvage has quite another signification. By an ancient and universal law, maritime property which has sustained maritime disaster, and is in danger of perishing, may be saved by any person who can save it, whether they are or are not requested to do so by the owner or his agent. And the persons so saving it acquire a right to compensation, and a lien or claim on the property saved for compensation. The persons saving the property are called "salvors," and the amount paid to them for saving the property is called "salvage." This is now the more common use of the word.

This law is not only applicable to all maritime property, but is confined to that; and is nearly unknown in reference to property saved from destruction on land.

Because this principle is wholly and exclusively maritime, no court but that of Admiralty acknowledges and enforces it. Salvors have a lien on the property saved for their compensation; that is, they have possession of it, and have a right to keep possession of it until their claim be satisfied. If the claim is disputed by the owners it is enforced by proceedings in the Admiralty Court.

Although services were rendered to the ship or cargo, or both, it does not follow that they were salvage services in the legal sense of the word. For certainly every person who helps another at sea does not thereby acquire a right to take possession of the property in reference to which his assistance was given, and carry it into port. To give this right, the property, whether ship or cargo, must have been in the proper and rational sense of the term *saved*; that is, there must have been actual disaster and impending danger of destruction; and from this danger the property must have been rescued by the exertion of the salvors, either alone, or working together with the original crew.

It is to be noticed, however, that neither the master nor officers nor sailors of the ship that is saved can be salvors, or entitled to salvage. The policy of the law-merchant forbids the holding out such a reward for merely doing their duty. It considers that sailors might be induced to let the vessel get into danger, if they could expect a special reward for getting her out of it. They are already bound by law to do all they possibly can do to save the ship and cargo under all circumstances. But courts of admiralty have sometimes allowed gratuities to seamen for extraordinary exertions and very meritorious conduct. A passenger may be a salvor of the ship he sails in, because he has no especial duty in regard to it.

If the Court of Admiralty find it to be a case for salvage, there are no positive and certain rules which determine how much shall be given, or in what proportions, to the different salvors. In every case the court is governed by the circumstances of that case; and even if a ship or cargo be entirely abandoned at sea, or, in maritime phrase, *derelict*, those who find it and take possession of it, and bring it in, take according

to their merits, and not one-half, as used to be the rule. More than one-half is very seldom given; but this has been done in a few extraordinary cases.

If the property is not entirely derelict or deserted, and all hope of recovering it by the original crew given up, then less than half is usually given by way of salvage. How much less depends on the circumstances. It may be very little, or nearly half. The court will inquire how much time was lost by the salvors, how much labor the saving of the property required, and, most of all, how much exposure the salvors underwent, or how much danger they incurred. For it is an established rule, that in addition to a fair compensation for time, labor, and loss of insurance (for which see the chapter on Insurance), the court will give a further sum by way of reward, and for the purpose of encouraging others to make similar exertions and incur similar perils to save valuable property. And, in this point of view, all necessary exposure and danger are considered as entitled to liberal reward.

If the court have not restored the property to its owners on their giving bonds with sureties to pay the salvage and costs, they order the property sold; and they may do either of these things at any period of the proceedings. At the close, they decree the whole amount of salvage, and also direct particularly its distribution.

A large part, usually about one-fourth, of the whole salvage, is allowed to the owners of the saving ship or ships; another large part to her master, less parts to the officers, in proportion to their rank, and the residue is divided among the crew, with such discrimination between one and another as greater or less exertions or merit require.

SECTION X.

THE NAVIGATION OF THE SHIP.

1. OF THE POWERS AND DUTIES OF THE MASTER.—The master has the whole care and the supreme command of his vessel, and his duties are co-equal with his authority. He must see to everything that respects her condition; including her repair, supply, loading, navigation, and unloading. He is principally

the agent of the owner; but is, to a certain extent, the agent of the shipper, and of the insurer, and of all who are interested in the property under his charge.

Much of his authority as agent of the owner springs from necessity. He may even sell the ship in a case of extreme necessity; so he may make a bottomry bond which shall pledge her for a debt; so he may charter her for a voyage or a term of time; so he may raise money for repairs, or incur a debt therefor, and make his owners liable. All these, however, he can do only from necessity. If the owner be present, in person or by his agent, or is within easy access, or can be consulted, by telegraph or otherwise, without a loss of time which would be seriously injurious, the master has no power to do any of these things unless specially authorized.

If he does them in the home port, the owner is liable only where, by some act or words, he ratifies or adopts the act of his master. If in a foreign port, even if the owner were there, he may be liable, on his master's contracts of this kind, to those who neither knew nor had the means of knowing that the master's power was superseded or qualified by the presence of the owner. The master being by the law-merchant the *general agent* of the owner of the ship, no one dealing with him can be prejudiced by any private or secret limitations to his authority by the owner.

Beyond the ordinary extent of his power, which is limited to the care and navigation of the ship, he can go, as we have said, only from necessity. But this necessity must be greater to justify some acts than for others. Thus, he can sell the ship only in a case of extreme and urgent necessity; that is, only when it seems in all reason impossible to save her, and a sale is the only way of preserving for the owners or insurers any part of her value. We say "seems;" for if such is the appearance at the time, when all existing circumstances are carefully considered and weighed, the sale is not void, if some accident, or cause which could not be anticipated, as a sudden change in the wind or sea, enables the purchaser to save her easily. Several such cases have occurred.

So, to justify him in pledging her by bottomry, there must be a stringent and sufficient necessity; but it may be far less than is required to authorize a sale. It is enough if the money

is really needed for the safety of the ship, and cannot otherwise be raised, or not without great waste.

So, to charter the ship, there must be a sufficient necessity, unless the master has express power to do this. But the necessity for this act may be only a mercantile necessity; or, in other words, a certain and considerable mercantile expediency.

So, to bind the owners to expense for repairs or supplies, there must also be a necessity for them. But here it is sufficient if the repairs or supplies are such as the condition of the vessel, and the safe and comfortable prosecution of the voyage, render proper.

So the master—unlike other agents, who have generally no power of delegation—may substitute another for himself, to discharge all his duties, and possess all his authority, if he is unable to discharge his own duties, because, in that case, the safety of the ship and property calls for this substitution.

Generally, the master has nothing to do with the cargo between the lading and the delivery. But, if the necessity arises, he may sell the cargo, or a part of it, at an intermediate port, if he cannot carry it on or transmit it, and it must perish before he can receive specific orders. So, he may sell it, or a part, or pledge (or hypothecate) it, by means of a *respondentia* bond, in order to raise money for the common benefit. A bond of *respondentia* is much the same thing as to the cargo that a bottomry bond is as to the ship. Money is borrowed by it, at maritime interest, on maritime risk, the debt to be discharged by a loss of the goods. But it can be made by the master only on even a stronger necessity than that required for bottomry; only when he can raise no money by bills on the owner, nor by a bottomry of the ship, nor by any other use of the property or credit of the owner. Indeed, it seems that, when goods are sold by the master to repair the vessel, it is to be considered as in the nature of a forced loan, for which the owner of the vessel is liable to the shipper, whether the vessel arrive or not.

The general remark may be made, that a master has no ordinary power, and can hardly derive any extraordinary power even from any necessity, except for those things which are fairly within the scope of his business as master, and during his employment as master. Beyond this he has no agency or authority that is not expressly given him.

The owner is liable also for the wrong-doings of the master; but with the limitation which belongs generally to the liability of a principal for the torts of his agent, or of a master for the torts of his servant. That is, he is liable for any injury done by the master while acting *as the master of his ship*, but not for the wrongful acts which he may do personally when he is not acting in his capacity of master, although he holds the office at the time. Thus if, through want of skill or care while navigating the ship, he runs another down, the owner is liable for the collision. But the owner is not liable if the master embezzles goods which he takes on board to fill his own privilege, to have himself all the freight and profit.

For any misdeed of the master, for which the owner is liable, his liability is limited to the value of the ship and freight.

2. OF COLLISION.—The general rules in this country in respect to collision are that the party in fault suffers his own loss and compensates the other party for the loss he may sustain. If neither is in fault, the loss rests where it falls. If both parties are in fault, the loss rests where it falls by the rules of the common law, but is equally divided in Admiralty. There are certain rules in regard to sailing, founded on the principle that the ship which can change its course to avoid collision with least inconvenience must do so.

Those contained in Rev. Stat. § 4233, as amended by Act of March 3, 1897, require that "when two sailing-vessels are approaching one another, a vessel which is running free shall keep out of the way of a vessel which is close-hauled; a vessel which is close-hauled on the port tack shall keep out of the way of a vessel which is close-hauled on the starboard tack; when both are running free, with the wind on different sides, the vessel which has the wind on the port side shall keep out of the way of the other; when both vessels are running free, with the wind on the same side, the vessel which is to the windward shall keep out of the way of the vessel which is to the leeward; a vessel which has the wind aft shall keep out of the way of the other vessel." "If two vessels under steam are meeting end on, the helms of both shall be put to port so that each may pass on the port side of the other; if crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other."

Steam-vessels are regarded in the light of vessels navigating with a fair wind, and are always under obligations to do whatever a sailing-vessel going free or with a fair wind would be required to do under similar circumstances. Their obligation extends still further, because they possess a power to avoid collision not belonging to sailing-vessels, even if they have a free wind, the master having the steamer under his command, both by changing the helm and by stopping or reversing the engines.

As a general rule, therefore, when meeting a sailing-vessel, whether close-hauled or with the wind free, the latter has a right to keep her course, and it is the duty of the steamer to adopt such precautions as will avoid her.

The statute, in addition to the sailing and steering rules above mentioned, provides rules for the display of lights and the use of fog signals by different classes of vessels on different occasions. Briefly stated, these rules provide that in the night all vessels in motion shall carry a green light on the starboard side and a red light on the port side. Ocean steamships and steamers carrying sail carry in addition a white light on the foremast head; coasting steamers a central range of two white lights; and steamers towing other vessels two white mast-head lights arranged vertically. All vessels at anchor in a roadstead must show a white light.

In foggy weather a steamer under way must sound a steam-whistle, and when towing, three blasts of quick succession, at intervals of not more than one minute. Sailing-vessels under way must sound a fog horn at intervals of not more than one minute.

Both steamers and sailing-vessels at anchor must sound a bell at intervals of not more than two minutes.

SECTION XI.

THE SEAMEN.

THE law makes no important distinction between the officers, or mates, as they are usually called, and the common sailors, except that the former must be citizens of the United States. Our statutes contain many provisions in behalf of the seamen, and in regulation of their rights and duties, although the con-

tract between them and the ship-owner is in general one of hiring and service. They relate principally to the following points: 1st, the shipping articles; 2d, wages; 3d, provisions and subsistence; 4th, the seaworthiness of the ship; 5th, the care of seamen in sickness; 6th, the bringing them home from abroad; 7th, regulation of punishment.

First. Every master of a vessel bound from a port in the United States to any foreign port, except British North America, West India Islands, or Mexico, or of any ship or vessel of the burden of seventy-five tons or upwards, bound from a port in the Atlantic to one on the Pacific, or *vice versa*, is required to have shipping articles, which articles every seaman on board must sign, in the presence of a U. S. Shipping Commissioner.

They must contain the following particulars: "1. The nature, and as far as practicable, the duration of the intended voyage or engagement, and the port or country at which the voyage is to terminate; 2. The numbers and description of the crew, specifying their respective employments; 3. The time at which each seaman is to be on board, to begin work; 4. The capacity in which each seaman is to serve; 5. The amount of wages which each seaman is to receive; 6. A scale of the provisions which are to be furnished to each seaman; 7. Any regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct which may be sanctioned by Congress as proper to be adopted and which the parties agree to adopt; 8. Any stipulations in reference to allotment of wages, or other matters not contrary to law."

Second. Wages are regulated as above, and by limiting the right to demand payment in a foreign port to one-half the amount then due, unless otherwise stipulated. Seamen have a lien on ship and freight for wages, which is enforceable in Admiralty. By the ancient rule, that freight is the mother of wages, any accident or misfortune which made it impossible for the ship to earn its freight destroyed the claim of the sailors for wages. This rule is now abolished by statute, but in case of wreck or loss of vessel, wages are recoverable only to the time of such wreck or loss. Payment of advance wages is now prohibited by law.

Orders to be paid from future wages are also forbidden, except that a seaman may stipulate in the shipping agreement for allot-

ment of any portion of his wages to be paid to wife, children, parents, grandparents or sister. Such allotment must be in writing, approved by a shipping commissioner.

Third. Provisions of due quality and quantity must be furnished by the owner, and extra wages are given to the seamen when on short allowance, or if the provisions furnished are of bad quality, unless the necessity be caused by some peril of the sea, or other accident of the voyage. The master may at any time put them on a fair and proper allowance to prevent waste.

Fourth. The owner is bound to provide a seaworthy vessel, and our statutes provide the means of lawfully ascertaining her condition at home or abroad, by a regular survey, on complaint of the mate and a majority of the seamen. If seamen, after being shipped, refuse to proceed upon their voyage, and are complained of and arrested, the court will inquire into the condition of the vessel, and if the complaint of the seamen is justified, will discharge them, or mitigate or reduce their punishment.

Fifth. As to sickness, our statutes require that every vessel belonging to a citizen of the United States bound to any foreign port, or being of the burden of seventy-five tons and bound from a port on the Atlantic to one on the Pacific, or *vice versa*, must be provided with a chest of medicines. Sailing-vessels bound on long voyages are required to carry suitable quantities of lemon juice, vinegar, etc., as precautions against scurvy. For failure to do so the owner or master is liable to heavy fine. Marine hospitals are also maintained by the Government to which every sick seamen may repair without charge. In addition to this the general law-merchant requires every ship-owner or master to provide suitable medicine, medical treatment, and care, for every seaman who becomes sick, wounded, or maimed, in the service of the ship, at home or abroad, at sea or on shore; unless this is caused by the misconduct of the seaman himself. The right to these things extends to the officers of the ship.

Sixth. The right of the seaman to be brought back to his own home is very jealously guarded by our laws. The master is required before sailing to give a bond for the return of the men named in the shipping articles. He should always present his shipping articles to the consul or commercial agent of the United States, at every foreign port which he visits, but is not required by law to do this unless the consul requires. He must.

however, present them to the first boarding officer on his arrival at a home port. And if, upon an arrival at a home port from a foreign voyage, it appears that any of the seamen are missing, the master must account for their absence. Our consular officers may authorize the discharge of a seaman on his own application or that of the master, if it appears that he has completed his shipping agreement, or is entitled to his discharge under any Act of Congress or according to the principles and usages of maritime law; in which case his wages must be paid to the date of discharge, but not beyond. They may also discharge him if it appears that the voyage is continued contrary to agreement, or that the ship is badly provisioned, or unseaworthy, or that he has been cruelly treated by the officers. In such cases the master is required to pay him one month's extra wages and to procure him employment on some other vessel, or to provide for his return to the port of shipment or some other port agreed to by him. They may also authorize the discharge of a seaman for gross misconduct, in which case he has no claim for extra wages. In case of the sale of a vessel abroad the master must provide for the return of the crew to the United States. Consular officers may also provide at the expense of the Government for the return to the United States of seamen disabled by injury or illness abroad; they may also send destitute seamen home in American ships, which are bound to carry them for a compensation not to exceed ten dollars each, and the seamen so sent must work and obey as if originally shipped. If a master discharges a seaman against his consent, and without good cause, in a foreign port, the seaman may recover full indemnity or compensation for his loss of time or expenses incurred by reason of such discharge. For the protection of the seamen the master is required on the termination of the voyage to render an account of wages due, with any deductions, to a U. S. Shipping Commissioner, and to pay the men their wages and give them a discharge in his presence.

Seventh. As to the regulation of punishment, flogging and all other forms of corporal punishment have been abolished and prohibited by law. Desertion, in maritime law, is distinguished from absence without leave, by the intention not to return. This intention is inferred from a refusal to return, or from continued absence. If the man returns and is received, this is a con-

donation of the offense, and is a waiver of forfeiture. Desertion is punished by forfeiture of all or any part of the clothes or effects the deserter leaves on board, and of all or any part of the wages or emoluments then earned. For neglecting or refusing without reasonable cause to join his vessel or proceed to sea, or for absence at any time without leave, not amounting to desertion, forfeiture of two days' pay or expenses incurred in hiring a substitute. For wilful disobedience to lawful command at sea, a seaman may be put in irons, and on arrival at port be punished by forfeiture of wages or imprisonment, not exceeding three months, at the discretion of the court. Penalties are also imposed by the statute for other offenses. On the commission of any offense an entry must be made on the same day in the log book, signed by the master and by the mate or one of the crew, and a copy furnished to the offender and read to him.

SECTION XII.

PILOTS.

AN Act of Congress authorizes the several States to make their own pilotage laws, and questions under these laws are cognizable in the State courts. No one can act as pilot, and claim the compensation allowed by law for the service, unless duly appointed. And he should always have with him his commission, which should always designate the largest vessel he may pilot, or that which draws the most water. If a pilot offers himself to a ship that has no pilot, and that is entering or leaving a harbor and has not already reached certain geographical limits, the ship must pay him pilotage fees, whether his services are accepted or not. As soon as the pilot stands on deck, he has control of the ship. But it remains the master's duty and power, in case of obvious and certain disability, or dangerous ignorance or error, to disobey the pilot, and dispossess him of his authority; but the master should interfere with the pilot only in extreme cases. If a ship neglect to take a pilot when it should and can take one, the owners will be answerable in damages to shippers or others for any loss which may be caused by such neglect or refusal. Pilots are themselves answerable for any damages resulting from their own negligence or default, and have been held strictly to this liability.

SECTION XIII.

MATERIAL MEN.

MARITIME law calls by this name all persons employed to repair a ship or furnish her supplies. Such persons, and indeed all who work upon her, have a lien on the ship for their charges. Formerly this lien was limited by admiralty law to foreign ships; but by a recent statute of the United States it is now provided that "any person furnishing repairs, supplies, or other necessities, including the use of dry dock or marine railway, to a vessel, whether foreign or domestic, upon the order of the owner or owners of such vessel, or of a person by him or them authorized, shall have a maritime lien on the vessel which may be enforced by a proceeding in rem, and it shall not be necessary to allege or prove that credit was given to the vessel." And it is further provided that the managing owner, ship's husband, master, or any person to whom the management of the vessel at the port of supply is intrusted shall be presumed to have authority from the owner to procure repairs, supplies and other necessities for the vessel. Similar liens are given by statute in many of the States.

(102.)

Bill of Sale of Vessel.

To all to whom these Presents shall come, Greeting: Know ye that _____ (name of seller) of the _____ (town or city and county where he resides) in the State of _____ owner (if the seller owns only a part of the vessel, here say what part) of the (ship, or what else it is) or vessel called the _____ of the burden of _____ tons, or thereabouts, for and in consideration of the sum of _____ dollars, lawful money of the United States of America, to me (or us, if more sellers than one) in hand paid, before the ensembling and delivery of these presents, by (name of the buyer) the receipt whereof I (or we) do hereby acknowledge, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said (name of the buyer) and his executors, administrators, and assigns, the whole (or name the part) of said _____ or vessel, together with the masts, bowsprit, sails, boats, anchors, cables, tackle, apparel, and furniture, and all other necessities thereunto appertaining and belonging. The certificate of the enrollment (or registry) of which said _____ or vessel, is as follows:

"ENROLLMENT (or Registry).

"No. _____

"In conformity to Title L., 'Regulation of Vessels in Domestic Commerce,' (or, in case of registry. In pursuance of chapter one, Title XLVIII,

'Regulation of Commerce and Navigation') of the Revised Statutes of the United States, _____ (*name, occupation and place of abode of owner*) having taken and subscribed the oath required by law, and having sworn that he (*or if more than one owner 'together with,' giving name, occupation, place of abode and proportion of each owner*) is (*or are*) a citizen (*or citizens*) of the United States, and sole owner (*or owners*) of the vessel called _____, of (*name of port*), whereof _____ is at present master, and is a citizen of the United States, and _____ (*name and office of person by whom she was surveyed or measured*) having certified that the said vessel has _____ decks, and _____ masts, and that her length is _____ feet, her breadth _____ feet, her depth _____ feet, and that she measures _____ tons; that she is (*kind of vessel, together with her build*), and that she has (*or has not*) a gallery or head.

"And the said (*owner or master by whom certificate of measurement was countersigned*) having agreed to the description and admeasurement above specified, and sufficient security having been given in conformity with the terms of the said title, the said _____ has been duly enrolled (*or registered*) at the port of _____

"Given under my hand and seal of office, at the port of _____ this _____ day of _____ in the year one thousand nine hundred and _____,

Collector."

To Have and to Hold the said _____ or vessel, and appurtenances thereunto belonging, to him (*or them*), the said _____ (*name of the buyer*) and his (*or their*) executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof of him (*or them*), the said _____ (*name of the buyer*) and his (*or their*) executors, administrators, and assigns forever; and I (*or we*) the said (*name of the seller*) have and by these presents do promise, covenant, and agree, for myself (*or ourselves*) and my (*or our*) heirs, executors, administrators, and assigns, to and with the said _____ (*name of buyer*) and with his (*or their*) heirs, executors, administrators, and assigns, to warrant and defend the said _____ or vessel, and all the other before-mentioned appurtenances, against the lawful claims and demands of all and every person or persons whomsoever, and that I (*or we*) have good right and authority to sell and dispose of the same in manner aforesaid.

In Testimony Whereof, The said _____ has hereunto set his hand and seal, this _____ day of _____ one thousand nine hundred and _____

(Signature.) (Seal.)

Sealed and Delivered in the Presence of

STATE OF _____, {
_____ COUNTY. { ss.

I, _____ a Notary Public in and for the _____ County of _____ and State of _____, do hereby certify, that _____ personally known to

me as the same person whose name is subscribed to the annexed instrument of writing, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this _____ day of _____ A.D. 19____

(Seal.)

Notary Public.

(103.)

Mortgage of a Vessel.

Know all Men by these Presents, That I (or we, giving the names and residence of all the mortgagors) am (or are) _____ held and firmly bound unto _____ (the name and residence of the mortgagee) in the just and full sum of _____ dollars, lawful money of the United States of America, to be paid to the said _____ or his (or their) executors, administrators, or assigns; for which payment well and truly to be made, I bind myself, my heirs, executors, and administrators firmly by these presents.

Dated at _____ this _____ day of _____ in the year one thousand nine hundred and _____

Whereas, _____ (name of the mortgagee) has this day lent and advanced unto the said _____ (name of the mortgagor) the sum of _____ dollars on _____ the body, tackle, and appurtenances of the _____ or vessel called the _____ of the burden of _____ tons, or thereabouts; the said _____ (name of the mortgagor) being the (owner) of the same.

Now the Condition of this Obligation is such, That if the said (name of the mortgagor) shall pay or cause to be paid to the said _____ (name of the mortgagee) the sum of _____ dollars (the amount loaned), and interest thereon at the rate of _____ per cent. per annum _____ on or before the _____ day of _____ in the year 19____

then this obligation to be void; otherwise, to remain in full force and virtue. And in consideration of and as security for said loan as aforesaid, the said _____ (vessel, or ship, or steamer, as it may be) is by these presents assigned, pledged, mortgaged, set over, and conveyed to the said _____ heirs and assigns; the certificate of the enrollment of which vessel is as follows, viz.:

(Enrollment as in the previous form of a Bill of Sale of a Vessel.)

It being Mutually Understood and Agreed, That in case the amount of said loan and interest, or any part thereof, according to the terms of these presents, shall remain due and unpaid to said (name of mortgagee) after the expiration of _____, the said (name of mortgagee) may take possession of said _____ and appurtenances, and sell the same at public auction, in order to satisfy the amount then due, without any proceedings in court or otherwise, for the purpose of authorizing such sale, and thereupon may execute and deliver a sufficient bill of sale to transfer completely to any purchaser or purchasers all title and property in and to

the said _____ and appurtenances, to the said (*name of mortgagor*) as (*owner*) thereof, now belonging.

The said (*name of the mortgagee*) thereupon to account to the said _____ (*name of the mortgagor*) for any surplus of such sale, after paying all charges and expenses.

And in case of such sale as aforesaid, the said _____ (*name of the mortgagor*) executors, administrators, or assigns, shall, whenever thereto requested, make, execute, and deliver to such purchaser or purchasers, another bill of sale of said _____ and appurtenances, in which the enrollment shall be recited as above, for the transferring completely to said purchaser or purchasers all the right, interest, and claim of said _____ his executors, administrators, or assigns, as owner of said _____

And in default of the prompt execution and delivery of such other bill of sale to such purchaser or purchasers, by the said _____ when thereto requested, the said _____ is hereby constituted and appointed the legal attorney of the said _____ for the purpose of making, executing, and delivering such bill of sale, and the said _____ hereby ratifies and confirms the act of the said _____ as attorney for said purpose.

And it is hereby further Agreed, That insurance shall be made at some office in _____ on the said _____ for the security of the said _____ (*name of the mortgagee*) to an amount not less than the sum loaned as aforesaid, and the said _____ (*name of the mortgagee*) is hereby authorized to procure such insurance, at the expense of the said _____ (*name of the mortgagor*) if not seasonably obtained by him.

(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in Presence of
(*Witness.*)

COUNTY OF _____ }
STATE OF _____, } ss.

On the _____ day of _____ in the year one thousand nine hundred and _____, before me personally came _____ the individual described in, and who executed the foregoing instrument, and _____ acknowledged that he executed the same.

(104.)

A Charter-Party.

This Charter-Party, Made and concluded upon in _____ the _____ day of _____ in the year one thousand nine hundred and _____ between _____ (*name of the owner*) owner of the _____ of _____ of the burden of _____ tons or thereabouts, register measurement, now lying in the harbor of _____ of the first part, and _____ (*name of the hirer*) of the second part, witnesseth, that the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, covenants and agrees on the freighting and chartering of the said vessel unto the said party of the second part, for the voyage from the port of _____ to _____, on the terms following; that is to say:—

First. The said party of the first part engages that the said vessel in and during the said voyage shall be kept tight, stanch, well-fitted, tackled and provided with every requisite, and with men and provisions necessary for such a voyage.

Second. The said party of the first part further engages that the whole or said vessel (with the exception of the cabin, the deck, and the necessary room for the accommodation of the crew, and of the sails, cables, and provisions) shall be at the sole use and disposal of the said party of the second part during the voyage aforesaid; and that no goods or merchandise whatever shall be laden on board, otherwise than from the said party of the second part, or his agent, without his consent, on pain of forfeiture of the amount of freight agreed upon for the same.

Third. The said party of the first part further engages to take and receive on board the said vessel, during the aforesaid voyage, all such lawful goods and merchandise as the said party of the second part, or his agents, may think proper to ship.

And the said party of the second part, for and in consideration of the covenants and agreements to be kept and performed by the said party of the first part, covenants and agrees with the said party of the first part, to charter and hire the said vessel as aforesaid, on the terms following, that is to say:—

First. The said party of the second part engages to provide and furnish to the said vessel:—

Second. The said party of the second part further engages to pay to the said party of the first part, or his agent, for the charter or freight of the said vessel during the voyage aforesaid, in the manner following, that is to say:—

It is further agreed between the parties to this instrument, that the said party of the second part shall be allowed, for the loading and discharging of the vessel at the respective ports aforesaid, lay-days as follows, that is to say:—

and in case the vessel is longer detained, the said party of the second part agrees to pay to the said party of the first part, demurrage at the rate of _____ dollars per day for each and every day so detained, provided such detention shall happen by default of the said party of the second part, or his agent.

It is further understood and agreed, that the cargo shall be received and delivered alongside within reach of the vessel's tackles.

It is also further understood and agreed, that this charter shall commence when the vessel is ready to receive cargo at her place of loading, and notice thereof is given to the party of the second part, or to his agent.

To the true and faithful performance of all the foregoing covenants and agreements, the said parties, each to the other, do hereby bind themselves, their executors, administrators, and assigns, and also the said vessel, freight, tackle, and appurtenances, and the merchandise to be laden on board, each to the other, in the penal sum of _____ dollars.

In Witness Whereof, The said parties have hereunto interchangeably set their hands and seals, this _____ day of _____ 19____

(Signatures.) (Seals.)

Signed, Sealed, and Delivered in the Presence of
(Witnesses.)

(105.)

A Bill of Lading.

Shipped, in good order and well conditioned, by _____, (name of the shipper) on board the _____ called the _____ whereof _____ is master, now lying in the port of _____ and bound for _____:

To say:—(here describe or enumerate the parcels) being marked and numbered as in the margin, and are to be delivered in the like good order and condition, at the aforesaid port of _____ (the dangers of the seas only excepted), unto (the name of the consignee) or to assigns, he or they paying freight for the said _____ (here specify the rate of freight agreed to be paid) with _____ primage and average accustomed.

In Witness Whereof, The master or purser of the said vessel hath affirmed to _____ bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void.

Dated in _____ the _____ day of _____ 19____

(Signature.)

(106.)

A Bottomry Bond.

Know all Men by these Presents, That I (name of the master or of the owner if the Bond is made by him), now master and commander of the _____ or vessel called the _____ of the burden of _____ tons, or thereabouts, now lying in the port of _____ am held firmly bound unto _____ (name of the lender who is the obligee of the bond) in the sum of _____ lawful money of the United States of America, to be paid to the said _____ or to his certain attorney, executors, administrators, or assigns; for which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, and also the said vessel, her tackle, apparel, and furniture, firmly by these presents. Sealed with my seal, at _____ this _____ day of _____ in the year of our Lord one thousand nine hundred and _____

Whereas, The above bounden (name of the obligor) has been obliged to take up and borrow, and hath received of the said _____ for the use of the said vessel, and for the purpose of fitting the same for sea, the sum of _____ lawful money of the United States of America, which sum is to be and remain as a lien and bottomry on the said vessel, her tackle, apparel, and furniture, _____ at the rate or premium of (state the rate of the maritime interest) for the voyage. In consideration whereof, all risks of the seas, rivers, enemies, fires, pirates, etc., are to be on account of the said (name of the lender). And for the better security of the said sum and premium, the said master doth, by these presents, hypothecate and

assign over to the said _____ his heirs, executors, administrators, and assigns, the said vessel, her tackle, apparel, and furniture. And it is hereby declared that the said vessel, _____ is thus hypothecated and assigned over for the security of the money so borrowed, and taken up as aforesaid, and shall be delivered for no other use or purpose whatever, until this bond is first paid, together with the premium hereby agreed to be paid thereon.

Now the Condition of this Obligation is such, That if the above bounden _____ (*the borrower*) shall well and truly pay, or cause to be paid unto the said _____ (*the lender*) the just and full sum of _____ lawful money as aforesaid, being the sum borrowed, and also the premium aforesaid, at or before the expiration of _____ days after the arrival of the said vessel at _____ then this obligation, and the said hypothecation, to be void and of no effect, otherwise to remain in full force and virtue. Having signed and executed two bonds of the same tenor and date, one of which being accomplished, the other to be void and of no effect.

(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in the Presence of

I do not give the form of a Respondentia Bond. This contract is now unusual, and is made only when some special emergency calls for it, and must then be framed to suit that emergency, and express the special terms of the bargain. The foregoing form, in connection with what is said of Respondentia Bonds in the text, and the points in which they resemble Bottomry Bonds and those in which they differ from them, will enable any one to frame a Respondentia Bond suited to most cases.

(107.)

Maritime Protest.

UNITED STATES OF AMERICA.

STATE OF _____ COUNTY OF _____

Notary.

By this Public Instrument of Protest, Be it known, that on the _____ day of _____ in the year of our Lord one thousand nine hundred and _____ before me, _____ a Notary Public in and for the State of _____ County of _____ and dwelling in the city of _____, State of _____, duly commissioned and sworn, personally came and appeared _____ (*names of all the parties who make the protest, with a description of each of them, as to occupation and residence*) _____ which said appearers, after having been duly sworn by me, the said notary, upon the Holy Evangelists of Almighty God, voluntarily, freely, and solemnly declare and depose as follows, to wit: That the _____ (*name of the vessel,*

describing her generally), on the _____ day of _____ in the year 19____ sailed from the port of _____ bound for the port of _____ with a cargo of _____ that when they started, as aforesaid, the said _____ was stout, staunch and strong; had her cargo well and sufficiently stowed and secured; was well manned, tackled, victualled, appareled and appointed; and was in every respect fit for the voyage she was about to undertake: And thereafter, on the _____ day of _____ in the year 19____ (*here must be set forth with some minuteness the place of any accident or loss, and the circumstances of the occurrence*) _____ Now, therefore, because of the premises, and as all the loss, damage and injury which already have or may hereafter appear to have happened or accrued to the said _____ or her said cargo, have been occasioned solely by the circumstances hereinbefore stated, and cannot nor ought not to be attributed to any insufficiency of the said _____ or default of him, the said _____ his officers or crew; he now requires me, the said notary, to make his protest and this public act thereof, that the same may serve and be and remain in full force and virtue, as of right shall appertain. And thereupon the said _____ doth protest, and I, the said notary, at his special instance and request, do, by these presents, publicly and solemnly protest against winds, weather (*and whatever else caused the loss, as fire, pirates, &c.*), and against all and every accident, matter and thing, had and met with as aforesaid, whereby or by means whereof the said _____ or her cargo, already has, or hereafter shall appear to have suffered or sustained damage or injury, for all losses, costs, charges, expenses, damages, and injury, which the said _____ the owner or owners of the said _____ or the owners, freighters or shippers of her said cargo, or any other person or persons concerned in either, already have or may hereafter pay, sustain, incur, or be put unto by, through, or on account of the premises, or for which the insurer or insurers of the said _____ or her cargo, is or are respectively liable to pay, or make contribution or average, according to custom, or their respective contracts or obligations; so that no part of such losses and expenses already incurred, or hereafter to be incurred, do fall upon him, the said _____ his officers and crew.

We, _____ (*repeat here the names of the appearers*) do solemnly swear that the foregoing statement is correct, and contains a true account of all the facts and circumstances of the case, to the best of our knowledge.

(*Signatures of all the appearers.*)

Thus Done and Protested, at my office, in the city of _____, this _____ day of _____ in the year of our Lord one thousand nine hundred and _____

Notary Public, County of _____ State of _____

To all to whom these Presents shall come, I, _____ Notary Public, duly commissioned and qualified, residing at _____, in the County of _____ and State of _____, do hereby certify that the foregoing, purporting to be a copy of the protest of the master and a part of the crew of the _____, bearing date the _____ day of _____ last, is a true

and correct copy of said protest, which was made before me, examined and compared with the original draft of the same, drawn up and recorded in my office, in Book _____ page _____ and following.

In Testimony Whereof, I have hereunto set my hand, and affixed my notorial seal, this _____ day of _____ A. D. 19____

(Signature.) (Seal.)

CHAPTER XXVII.

MARINE INSURANCE.

SECTION I.

HOW THE CONTRACT OF INSURANCE IS MADE.

At the present day insurance is seldom made by individuals. Formerly, this was the universal custom in our commercial cities. Afterwards, companies were incorporated for the purpose of making insurance on ships and their cargoes; and the manifold advantages of this method have caused it to supersede the other. But an insurance company is not bound to insure for all who offer, and it has been held that an action will not lie against insurers for combining not to insure for a certain person, however malicious their motive may be.

The contract of insurance binds the insurer to indemnify the insured against loss or injury to certain property or interests which it specifies, from certain perils which it also specifies. The consideration for this obligation on the part of the insurer is the premium paid to the insurer, or promised to be paid to him, by the insured.

The instrument in which this contract is expressed is called a Policy of Insurance. But no instrument is essential to the validity of the contract; for if the proposals of the insured are written in the usual way in the proposal book of the insured, and signed by their officer with the word "done," or "accepted," or in any usual way to indicate that the bargain is made, it is valid, although no policy be delivered; and it would be construed as an insurance upon the terms expressed in the policy commonly used by that company.

If proposals are made, on either side, by letter, and accepted by the other party, also by letter, this is a valid contract of insurance as soon as the party accepting has mailed his letter to that effect, if he have not previously received notice of a withdrawal of the proposals.

The form of the policy is generally that which has been used for many years both in England and in this country, with such changes and modifications only as will make it express more accurately the bargain between the parties. And for this purpose it may be and is varied at pleasure.

It is subscribed only by the insurers; but binds both parties. The insured are bound for the premium, although no note is given. The date may be controlled by evidence showing when it was made and delivered; but if delivered after its date, it takes effect at and from its date, if that were the intention of the parties.

It may be effected on application of an agent of the insured, if he have full authority for this purpose; which need not be in writing. But a mere general authority, even if it related to commercial matters, or to a ship itself, as that of a "ship's husband," is not sufficient.

A party may be insured who is not named, if "for whom it may concern," or words of equivalent import, are used. But a party who seeks to come in under such a clause must show that he was interested in the property insured at the time the insurance was made, and that he was in the contemplation of the party asking insurance. The phrase "on account of owners at the time of loss," or an equivalent phrase, will bring in those who were intended, if they owned the property when the loss occurred, although there were assignments and transfers between the time of insurance and the loss.

Each person whose several interest is actually insured by any such general phrase may demand or sue in his own name.

If the nominal insured is described as "agent" generally, this is equivalent to "for all whom it may concern." And an insurance "for ——" will be read as for all whom it may concern, if that were intended. So, if the designation of the insured be common to many persons, the intention of the parties must decide for whom it is made. Whatever is written on any part of the sheet containing the policy, or even on a separate paper,

if referred to or signed by the parties as a part of the policy, is thereby made a part of it.

But things said by either party while making their bargain, or written on other paper, and not so referred to or signed, form no part of it. The policy may expressly provide that its terms shall be made definite, especially as to the property insured, by subsequent indorsements or additions. Thus, it is very common to insure property to a certain amount, "from A to B, on board ship or ships, as shall hereafter be indorsed on this policy." And when this or any equivalent phrase is used, the insured requests the insurers to indorse on the policy the name of the vessel, and the amount shipped, as soon as he has notice of it.

Alterations may be made at any time by consent. But a material alteration by either party, without the consent of the other, renders the contract void; although it was made honestly, in the hope or belief of its being assented to. A court of equity will correct a material mistake of fact.

A policy may be assigned, and the assignee may sue in the name of the assignor. If the loss is made by the policy payable "to order" or "to bearer," it will then be negotiable by indorsement or delivery, but it is not certain that the transferee can even then sue in his own name. In New York and some other States, not only these assignees, but other assignees of debts or contracts, may sue in their own names.

If the insured transfers the property, unaccompanied by a transfer of the policy consented to by the insurer, this discharges the policy, unless it was expressly made for the benefit of whoever should be owner at the time of the loss, as before stated. There is usually a clause to the effect that the policy is void if assigned without the consent of the insurers. But this does not apply to an assignment by force of law, as in a case of insolvency, or in a case of death. And after a loss has occurred, the claim against the insurers is always assignable like any other debt. And a seller who remains in possession of the property as trustee for the purchaser, or a mortgagor retaining possession, may retain the policy, and preserve his rights.

SECTION II.

THE INTEREST OF THE INSURED.

THE Contract of Insurance is a contract of indemnity for loss. The insured must, therefore, be interested in the property at the time of the loss. The value to be paid for may be agreed upon beforehand, and expressed in the policy, which is then called a *valued policy*; or left to be ascertained by proper evidence, and the policy is then called an *open policy*.

This valuation, if in good faith, is binding on both parties, even if it be very high indeed. But a *wager policy*, that is, one without interest, is void; and although there be some interest, the valuation may still be so excessive as to be open to the objection that the interest is a mere cover, and that the contract is void because only one of wager. The valuation is void if fraudulent in any respect; as if it cover an illegal interest or peril. And in this case the fraud vitiates and avoids the whole contract, and the insured recovers nothing. And if the valuation is gross and excessive, fraud may be presumed.

The insured may apply his valuation to the whole property, or to that part of it which he wishes to insure; thus he may cause himself to be insured for one-half of a cargo, the whole of which is valued at \$20,000, or for one-half, which half is valued at \$20,000; and if the policy says, "Insured \$15,000 on half of the ship *Scipio* (or on her cargo), valued at \$20,000," whether it is meant that the whole ship (or cargo) is valued at \$20,000, or the half only that is insured, will be determined by a reasonable construction of the language used. If he owns the whole, the valuation, in general, will be held to apply to the whole; and only to a part, if he owns only a part.

He may value one thing insured, and not another; or may value the same thing in one policy, and not in another; and then the valuation does not affect the policy which does not contain it. If only a part of the goods included in the valuation are on board and at risk, it applies to them in due proportion to their value.

A valuation of an outward cargo may be taken as a valuation of a return cargo, substituted for the other by purchase, and covered by the same policy. And a valuation will cover

the insured's whole interest in the thing valued, including the premium, unless a different purpose is expressed or indicated.

A valuation of freight applies to the freight of the whole cargo, and if a part only be at risk, it applies in proportion. And it applies either to the whole voyage, or to freight earned by voyages which form parts of the whole, as may be intended and expressed.

If profits are insured as such, they are generally valued, but may be insured by an open policy. If they are valued, the loss of the goods on which the profits were to have been made, implies in this country a loss of the valued profits, without proof that there would have been any profit whatever; it seems to be necessary in England to show that there would have been some profit, and then the valuation attaches.

It is very common to insure profits in fact without saying anything about them, by a valuation of the goods sufficiently high to include all the profits that can be made upon them.

In an open policy, where the value insured is to be determined by evidence, the value of the property—whether ship or goods—which is insured, is its value when the insurance took effect, including the premium of insurance; as the law of insurance intends indemnifying the assured as accurately as may be for all his loss. If a ship be insured, its value throughout the insurance is the same as at the beginning, without allowance for the effect of time upon it. And all its appurtenances, in a mercantile sense of this phrase, enter into its value.

While the *value* of the property does not vary with time, the *interest* of the insured at the time of the loss (which may be the whole, or half, or any other part) is that on which he founds his claim. Thus, if an owner of a ship is insured \$20,000 on ship A. B., valued at \$30,000, and afterwards sells half of the ship, and it is subsequently lost, he recovers only \$10,000. But if he owned half originally, and insured that, and before the loss acquired the other half, he recovers only for the half insured.

Generally, the value of goods is their invoice price, with all those charges, commissions, wages, etc., which enter into the cost to the owner when the risk commences. The drawback is

not deducted; and the expenses incurred after the risk begins, as for freight, etc., are not included. And the rate of exchange at the beginning of the risk is taken.

SECTION III.

THE INTEREST WHICH MAY BE INSURED.

A MERE possibility or expectation cannot be insured, but any actual interest may be. If one has contracted to buy goods, he may insure them, and will recover if the property be in him at the time of the loss; for if they are then destroyed, it will be his loss. (For what is meant by the property being in him, see the chapter on Sales.)

If one has taken on himself certain risks, or agrees to indemnify another for them, he may insure himself against the same risks. The policy may express and define the interest in such a way that any change in the nature of it will discharge the insurance. If it is not so defined and declared, a change, as from the interest of an owner to that of a mortgagor, or of a mortgagee, will not defeat the policy.

A mere indebtedness to a party on account of property gives the creditor no insurable interest; thus, one who repaired a house or a ship cannot insure the house or ship merely because the owner owes him; but if the creditor has a lien on the property, this is an insurable interest. And, generally, every bailee or party in possession of goods, with a lien on them, may insure them. And a lender on bottomry or respondentia may insure the ship or goods. And any persons who have possession of property, or a right to possession, and may legally make a profit out of it, as factors on commission, consignees, or carriers, may insure their interest.

If a mortgagee be insured, and recover from the insurers, he, generally at least, transfers to them the security for his debt, or accounts with them for its value; because, to the extent of that security, he has met with no loss, and if he did not transfer it, would recover his money twice. It should however be added that where a mortgagee, or one having a lien, insures his own interest in property, a payment of a loss to him by the insurers does not discharge the debt for which the mortgage or

the lien is the security. Where, however, the mortgagee is trustee for the mortgagor, as where the mortgagor causes insurance to be made on the premises, payable to the mortgagee in case of loss, or where the mortgagee effects insurance at the expense of the mortgagor, with his consent, payment by the insurers would go in discharge of the debt.

A policy usually adds to the description of the property, "lost or not lost." This phrase makes the policy retrospective; and attaches it to the property if that existed when, by the terms of the policy, the insurance began, whether this were for a voyage or for a certain time, although it had ceased to exist when the policy was made.

An interest which was originally valid and sufficient cannot be defeated by that which threatens, but does not complete, an actual divestment of the interest in property; therefore, not by attachment, or an execution for debt; nor by liability to seizure by government for forfeiture; nor a right in the seller to stop the goods *in transitu*; nor capture; because, after all these, the property may remain in or return to the insured. But sale on execution, actual seizure by government and forfeiture, stoppage *in transitu*, or condemnation by court as lawful prize, divest the property, and therefore discharge the insurance.

The insurance never attaches if the interest is illegal originally; and it is discharged if the interest becomes illegal subsequent to the insurance, or if an illegal use of the subject-matter of the insurance is intended. And any act is illegal which is prohibited by law, or made subject to a penalty. The effect would be the same if the policy opposed distinctly the principles and the purposes of law, as wagering policies do.

Mariners, or mates, are not permitted by the law-merchant to insure their wages, but may insure goods on board, bought with their wages; and one legally interested in the wages of a mariner may insure them; as one to whom they are assigned by order or otherwise. A master may insure his wages, commissions, or any profit he may make out of his privilege.

An unexecuted intention of illegality, if not distinctly acted upon, will not defeat a policy; nor a remote and incidental illegality; as smuggling stores on board, or not having on board the provisions required by law; nor a change from legality to

illegality, which cannot be proved or supposed to be known to the insured. And upon these questions, the court, if the case be balanced, will incline to the side of legality. A cargo may be insured which is itself lawful, but was purchased with the proceeds of an illegal voyage.

If a severable part of a cargo or a voyage is legal, it may be insured by itself, although other parts are illegal. But if a part of the whole property insured together is illegal, this avoids the whole policy.

A compliance with foreign registry laws is not necessary, and with our own probably is not, to sustain the insurance of an actual owner in good faith.

Freight is a common subject of insurance. In common conversation, this word means sometimes the cargo carried, and sometimes the earnings of the ship by carrying the cargo. The latter is the meaning in mercantile law, and especially in the law of insurance. It includes in insurance law the money to be paid to the owner of a ship by the shipper of goods, and also the earnings of an owner by carrying his own goods; and the amount to be paid to the owner by the hirer of his ship, and also the profits of such hirer, either by carrying his own goods, or by carrying, for pay, the goods of others.

An interest in freight begins as soon as the voyage is determined upon, and the ship is actually ready for sea, and goods are on board, or are ready to be put on board, or are promised to be put on board by a contract which binds the owner of the goods to put them on board, for that voyage.

If a ship is insured on a voyage which is to consist of many passages, and sails without cargo, but a cargo is ready for her, or contracted for her, at the first port she is to reach and sail from, the owner has an insurable interest in the freight from the day on which she sails from his home port.

If one makes advances towards the freight he is to pay, and this is to be repaid to him by the ship-owner if the freight is not earned, the advancer has no insurable interest in what he advances; but if he is to lose it, without repayment, if the ship be lost or the freight not earned, he has an insurable interest.

SECTION IV.

PRIOR INSURANCE.

OUR marine policies generally provide for this by a clause to the effect that the insurer shall be liable only for so much of the property as a prior insurance shall not cover. The second covers what the first leaves, the third what the second leaves, and so on; and as soon as the whole value of the property is covered, the remainder of that policy, and the subsequent policies, have no effect. This priority relates not merely to the date of the instrument, but to the actual time of insurance. Sometimes the policy provides that the insured shall recover only the same proportion of the whole loss which the amount insured in that policy bears to the whole amount insured by all the policies on the whole property.

Where no provision is made in the policies as to priority, all are insurers alike, but all together only of the whole value at risk. The insured, therefore, may recover of any one insurer at his election, and this insurer may compel the others to contribute to him in proportion to their respective insurances.

Insurances may be not successive, but simultaneous, and then no clause as to prior policies has any application, for then no policy is *prior* to another, and all the insurances are liable *pro rata*. They are simultaneous, if said to be so in the policies, which is common; or if made on the same day, and bearing the same date, and there is no evidence as to which was, in fact, first made.

SECTION V.

DOUBLE INSURANCE AND RE-INSURANCE.

IF there be double insurance, either simultaneously or by successive policies in which priority of insurance is not provided for, we have seen that all are insurers, and liable each in proportion; thus, if all the policies cover twice the value of the property insured, each policy is valid for one-half of its own amount.

But there is no double insurance, unless all the policies insure the very same subject-matter, against the same risks, and taken together exceed its whole value.

Many insurances of the same subject-matter, for the benefit of different parties, do not constitute double insurance.

Re-insurance is lawful; for whoever insures another has assumed a risk against which he may cause himself to be insured. This is often done by companies who wish to close their accounts, to lessen their risks, or get rid of some special risk.

SECTION VI.

THE MEMORANDUM.

THIS word is retained, because the English policies have attached to them a note or memorandum providing that the insurers shall not be liable for any loss upon certain articles therein enumerated (and thence called memorandum articles), unless it be total, or greater than a certain percentage. In our policies, the same thing is provided for, but usually by a clause contained in the body or in the margin of the policy. The general purpose is to guard against a liability for injuries which may very probably not arise from maritime peril, because the articles are in themselves perishable; but which injuries it might not be easy to refer to the precise causes which produced them. Thus, grain, fish, hides, fruit, etc., are very liable to be somewhat injured on the voyage, and if there has been bad weather, or a greater leak than usual, it is impossible to say whether these goods have lost value from their own decay, or from a peril of the sea. It is therefore provided, that the insurers shall not pay unless there be a total loss by a sea-peril, which ends all question, or so large a loss as ten or twenty per cent.; for this could hardly happen without visible and certain cause. And then, if the cause was shown to be not a peril insured against, the insurers would not be liable.

The perishable articles thus excepted, and the percentage of loss necessary to charge the insurers, vary very much at different times and in different States.

SECTION VII.

EXPRESS WARRANTIES.

A STIPULATION or agreement *in the policy*, that a certain thing shall be or shall not be, is an express warranty. And every

warranty must be, if not strictly, at least accurately complied with. Nor is it an excuse that the thing is not material; or that the breach was not intended, or not known; or that it was caused by an agent of the insured. A warranty is equally effectual if written upon a separate paper, but referred to in the policy itself as a warranty. And the direct assertion or allegation of a fact may constitute a warranty.

If the breach of the warranty exists at the commencement of the risk, it avoids the whole policy, although the warranty was complied with afterwards and before a loss, and although all other risks were distinct from that to which the warranty related. Thus, if a vessel is warranted "coppered," and she is not coppered, and is lost by the ignition of cotton in the hold. Here, the breach of the warranty, that is, the want of the copper, has nothing to do with the loss; but the insurers would be discharged.

If the breach occur after the risk begins, and before a loss, and be not caused or continued by the fault of the insured, the insurers are held; and so they are if a compliance with the warranty becomes illegal after the policy attaches, and it is therefore broken.

The usual subjects of express warranty are, first, the ownership of the property, which is chiefly important as it secures the neutrality, or freedom from war-risks, of the property insured. The neutrality of the ship and of the cargo must be proved by the ship's having on board all the usual and regular documents. False papers may, however, be carried for commercial purposes, either when leave is given by the insurers, or when it is permitted by a known and established usage.

If neutrality is warranted, it must be maintained by a strict adherence to all the rules and usages of a neutral trade or employment. Without warranty, every neutral ship is bound to respect a blockade which legally exists by reason of the presence of an armed force sufficient to preserve it, and of which the neutral has knowledge.

The second most common express warranty is that of the time of the ship's sailing. She sails when she weighs anchor or casts off her fastenings, and gets under way, if the intention be to proceed at once to sea without further delay. She must have been actually under way. But if she moves with the

intention of prosecuting her voyage, this is sufficient. But if not entirely ready for sea, she has not sailed by merely moving down the harbor. If she moves, being ready and intended for sea, but is afterwards accidentally and compulsorily delayed, this is a sailing. Nor is the warranty complied with by leaving a place to return to it immediately; or by going from one port of the coast or island, which she is warranted to leave, to another. If the ship is warranted "in such a harbor or port," or "where the ship now is," this means at the time of the insurance. And "warranted in port" means the port of insurance, unless another port is expressed or distinctly indicated.

SECTION VIII.

IMPLIED WARRANTIES.

THE most important of these warranties—which the law implies, or makes for the parties without their saying anything about them, although they may, if they please, make them for themselves—is that of *seaworthiness*. By this is meant, that every person who asks to be insured upon his ship, by the mere force and operation of law, warrants that she is, in every respect,—hull, sails, rigging, officers, crew, provisions, implements, papers, and the like,—competent to enter upon and prosecute that voyage at the time proposed, and encounter safely the common dangers of the sea. If this warranty be not complied with, the policy does not attach, whether the breach be known or not, unless there is some peculiar clause in the policy waiving this objection.

If the ship be seaworthy and the policy attach, no subsequent breach discharges the insurers from their liability for a loss previous to the breach. Even if the policy does not attach at the beginning of the voyage, if the unseaworthiness be capable of prompt and effectual remedy, and be soon and entirely remedied, the policy may then attach. If the insurance is "at and from" a port, there is no implied warranty in the nature of a condition precedent to the attaching of the policy, that the vessel shall be then seaworthy in the sense of being fit for sea, and it is sufficient if she is portworthy. But the policy is avoided if she goes to sea in an unseaworthy condition. The general rule is, that, if unseaworthiness prevents the policy from attach-

ing at the proper commencement of the *risk*, the contract becomes a nullity.

If she become unseaworthy in the course of the voyage, from a peril insufficient to produce it in a sound vessel, this may be evidence of inherent weakness and original unseaworthiness; and then the policy never attached. But if originally seaworthy, and by any accident made otherwise, the policy continues to attach until she can be restored to a seaworthy condition by reasonable endeavors. And the general rule is, that she must be so restored as soon as she can be. It is the duty of the master to repair her as soon as he can; by the aid of another ship if that may be, but if otherwise, not to keep her at sea if she can readily make a port where she can be made seaworthy; and not to leave that port until she is seaworthy. It is the rule that a ship must not leave a port in an unseaworthy condition, if she could there be made seaworthy; if she does, the insurers are no longer held. But their liability may be, not destroyed, but only suspended, if the seaworthiness be cured at the next port, especially if that be not a distant port.

There cannot possibly be a definite and universal standard for seaworthiness. The ship must be fit for her voyage or for her place. But a coasting schooner needs one kind of fitness, a freighting ship to Europe another, a whaling ship another, a ship insured only while in port another. So as to the crew, or provisions, or papers, or a pilot, or certain furniture, as a chronometer or the like; or the kind of rigging or sails. In all these respects, much depends upon the existing and established usage. There is, perhaps, no better test than this: the ship must have all those things, and in such quantity and of such quality, as the law requires, provided there is any positive rule of law affecting them; and otherwise such as would be deemed requisite according to the common consent and usage of persons engaged in that trade. And the reason for this rule is, that this is exactly what the insurers have a right to expect, and if the insured intend anything less, or the insurers desire anything more, it should be the subject of special bargain.

If a policy be intended to attach when a ship is at sea, the ship must be seaworthy in that sense and in that way in which a ship of her declared age, size, employment, and character, after being at sea for that time, under ordinary circumstances,

ought to be in, and may be expected to be in by all concerned. The standard of seaworthiness is to be found from the usage and understanding of merchants at the place where the ship belongs, and not at that where the ship is insured.

SECTION IX.

REPRESENTATION AND CONCEALMENT.

If there be an affirmation or denial of any fact, or an allegation which would lead the mind to a conclusion, whether made orally or in writing, or by exhibition of any written or printed paper, or by a mere inference from the words of the policy, before the making of the policy, or at the making, and the same be false, and tend to procure for him who makes it the bargain, or some advantage in the bargain, it is a *misrepresentation*. And it is the same thing, whether it refers to a subject concerning which some representations were necessary, or otherwise.

Concealment is the suppression of a fact not known to the other party, referring to the pending bargain, and material thereto.

A misrepresentation or a concealment discharges the insurers. To have this effect, it must continue until the risk begins, and then be material.

It is no defense that it was innocent, and arose from inadvertence or misapprehension, because the legal obligation of a full and true statement is absolute; nor that the insurers were not influenced by it, if it were wilfully made with intention to deceive.

If it be in its nature temporary, and begin after the risk begins, and end before a loss happens, the insurers are not discharged. And if it relate to an entirely separate subject-matter of insurance, as the goods only, and have no effect upon the risk as to the rest, (as the ship, for example,) it discharges the insurers only as to that part. Ignorance is never an excuse, if it be wilful and intentional. If one says only he believes so and so, the fact of his belief in good faith is sufficient for him. But if he says that is true of which he does not know whether it is true or false, and it is actually false, it is the same misrepresentation as if he knew it to be false. If a statement relate to the future, a future compliance or fulfilment is necessary.

Any statement in reply to a distinct inquiry will be deemed material; because the question implies that the insurer deems it material. On the other hand, the insured is not bound to communicate any mere expectation or hope or fear; but only all the facts material to the risk.

SECTION X.

WHAT THINGS SHOULD BE COMMUNICATED.

Not only ascertained facts should be stated by the insured, but intelligence, and mere rumors, if of importance to the risk; and it has been held that intelligence known to his clerks would be generally presumed to be known to him; and it is no defense that the things have been found to be false. It has been held that an agent was bound to state that his directions were sent him by express; because this indicated an emergency. If the voyage proposed would violate a foreign law not generally known, this should be stated.

It is impossible to give any other criterion to determine what should be communicated than the rule that everything should be stated which might reasonably be considered in estimating the risk. And so everything of any kind which the insurer might reasonably wish to take into consideration in estimating the value of the risk which he is invited to assume.

The question, however, being one of concealment as it affects the estimation of the risk, it is obvious that the insured need not state to the insurer things which he already knows; and by the same reason, he is not bound to state things which the insurer ought to know, and might be supposed to know.

If either party says to the other so much as should put the other upon inquiry in reference to a matter about which inquiry is easy and would lead to information, and the other party makes no inquiry, his ignorance is his own fault, and he must bear the consequences of it.

An intention which, if carried into effect, would discharge the insurers, as for example an intention to deviate, need not be stated, unless the intention itself can be shown to affect the risk. So a past damage to the property need not be stated, unless it affects its present probability of safety.

A false statement that other insurers have taken the risk on such or such terms is a misrepresentation; but a false statement by the insured that he thinks they would take it on such terms is not one, for of this the insurers can judge for themselves.

Every statement or representation will be construed rationally, and so as to include all just and reasonable inferences. A substantial compliance with it will be sufficient; and a literal compliance which is not a substantial one will not be sufficient.

SECTION XI.

THE PREMIUM.

THIS is undoubtedly due when the contract of insurance is completed; but in practice in this country, the premium in marine insurance is usually paid by premium note on time, which is given at or soon after the delivery of the policy. If the policy acknowledge the receipt of the premium, and it be not paid, this receipt will be no bar to an action for it.

The premium is not due if the risk is not incurred; whether this be caused by the non-sailing of the ship; or by one insured on goods not having goods on board; or not so much cargo as he is insured for; or by any error or falsity in the description which prevents the policy from attaching.

If the premium be not earned, or not wholly earned, it must be returned in whole or in part by the insurers if it has been paid; and not charged in account with the insured, if it be unpaid.

The premium may be partially earned; and then there must be a part return only. As if the voyage consist of several passages, or of "out and home" passages, and these are not connected by the policy as one entire risk; or if the insured have some goods at risk, but not all which he intended to insure.

It is, however, an invariable rule, that if the whole risk attaches at all,—that is, if there be a time, however short, during which the insurers might, in case of loss from a sea-peril, be called on for the whole amount they insure,—there is to be no return of premium.

In this country, insurers usually retain one-half of one per cent of a returnable policy. And our policies contain a clause

permitting the insurers to set off the premium due against a loss, whether the note be signed by the insured or by another person.

SECTION XII.

THE DESCRIPTION OF THE PROPERTY INSURED.

THE description must be such as will distinctly identify the property insured, as by quantity, marks, and numbers, or a reference to the fact of shipment, or the time of shipment, or the voyage, or the consignee; or in some similar and satisfactory way; and no mere mistake in a name, or otherwise, vitiates the description if it leaves it sufficiently certain. If different shipments come within the policy, the insured may attach it to either by his declaration, which may be done after the loss, provided this appears to have been the intention of the parties. "Cargo," "goods on board," "merchandise," mean much the same thing; and do not attach to ornaments, clothing, or the like, owned by persons on board and not intended for commercial purposes. "Property" is the word of widest and almost unlimited meaning. "Ship" or "vessel" includes all that belongs to it at the time,—even sextants or chronometers belonging to the ship-owner, and by him appropriated to the navigation of the ship. So it includes all additions or repairs made during the insurance.

The phrase "a return cargo" will generally apply to a homeward cargo of the party insured in the same ship, however it be procured; but the phrases "proceeds" and "returns" are generally regarded as limited to a return cargo bought by means of the outward cargo. And neither of these, or any similar phrases, will apply to the same cargo brought back again, unless it can be shown by the usage, or other admissible evidence, that this was the intention of the parties.

The nature of the interest of the insured need not be specified, unless peculiar circumstances, closely connecting this interest with the risk, make this necessary. But either a mortgagor or a mortgagee, a charterer, an assignee, a consignee, a trustee, or a carrier, may insure as on his own property, and without describing the exact nature of his interest.

SECTION XIII.

THE PERILS COVERED BY THE POLICY.

THE policy enumerates, as the causes of loss against which it insures, Perils of the Sea, Fire, Piracy, Theft, Barratry, Capture, Arrests, and Detentions; and "all other perils," by which is meant, by construction of law, all other perils of a like kind with those enumerated.

It is a universal rule, that the insurers are liable only for *extraordinary* risks. The very meaning of "seaworthiness," which the insured warrants, is that the ship is competent to encounter with safety all ordinary perils. If she be lost or injured, and the loss evidently arose from an ordinary peril, as from common weather, or the common force of the waves, the insurers are not liable, because the ship should be able to withstand these assaults. And if the loss be unexplained, and no extraordinary peril be shown or indicated, this fact would raise a very strong presumption of unseaworthiness. As, for example, if the vessel went down while sailing with favorable winds on a calm ocean.

It is a universal rule, that the insurers are never liable for a loss which is caused by the quality of the thing lost. This rule applies to the ship, her rigging and appurtenances, when worn out by age or hard service. But its most frequent application is to perishable goods. The memorandum already spoken of provides for this in some degree. But the insurers are liable for the loss of no article of merchandise whatever, if that loss were caused by the inherent qualities or tendencies of the article, *unless* these qualities or tendencies were excited to action and made destructive by a peril insured against. Thus, if hemp rots from spontaneous fermentation, which cannot occur if it be dry, the insurers are not liable if the loss arose from the dampness which the hemp had when laden on board; but if the vessel were strained by tempest, and her seams opened, and the hemp was in this way wet, and then rotted, they are liable.

The insurers may take upon themselves whatever risks they choose to assume. And express clauses in a policy, or the uniform and established usage and construction of policies, may throw upon them, as in fact it does, a very large liability to the

owner or shipper for the effects of the misconduct—wilful or otherwise—of the master and crew. The clause relating to barratry, to be spoken of presently, is of this kind.

If the cargo is damaged through the fault of the master or crew, the shipper of the cargo has a remedy against the owner of the ship. But this does not necessarily discharge the insurers. If, however, he enforces his claim against them, he is bound to transfer to them his claim against the ship-owner. For the insurers of the cargo, by paying a loss thereon, put themselves, as it were, in the position of the shippers, and acquire their rights.

SECTION XIV.

PERILS OF THE SEA.

By this phrase is meant all the perils incident to navigation; and especially those arising from the wind and weather, the state of the ocean, and its rocks and shores. But it will be remembered that the insurers take upon themselves only so many of these as are "extraordinary." Hence, destruction by worms or by rats is not such a peril as the insurers are liable for, because it is not extraordinary. It seems now settled that *fire* is not included among "perils of the sea," or "perils of the river." But it is usually mentioned in the policy, as one of the risks insured against.

If a vessel be not heard from, it will be supposed, after a reasonable interval, that she has perished; but the law has not determined the length of this interval with any exactness. The presumption of law will be, that she was lost by an extraordinary peril of the sea, and, of course, the insurers will be answerable for her. But this presumption may be rebutted by any sufficient evidence, as of unseaworthiness, or any other probable cause of loss.

SECTION XV.

COLLISION.

COLLISION is a peril of the sea which may deserve especial notice. In the chapter on Shipping, it has been stated, that, where a collision is caused by the fault of one of the ships, the ship in fault sustains the whole loss; that is, it must bear its

own loss, and must indemnify the other ship for the injury that ship sustains. It has been held that the insurers of the ship in fault are liable for the whole of this loss, because it is all caused by collision, which is a peril of the sea. But the Supreme Court of the United States has recently decided that the insurers are not held for more than the loss *directly* sustained by the ship they insure, that is, *not* for the amount that ship pays to the other ship for injury done to it.

SECTION XVI.

FIRE.

THIS peril also must come under the common rule, that the insurers will not be held unless it be caused by something extraordinary, and not belonging to the inherent qualities of the thing which takes fire.

The insurers would be held for any direct and immediate consequences of the fire; and for loss caused by the endeavor to extinguish it. It is, indeed, a general rule, that the insurers are liable for the loss or injury which is the natural, direct, and proximate effect of any peril insured against, although the loss itself may be only the effect of a preceding loss; as, if a part of the cargo was burned up, and another part was injured by water used to arrest the fire, the insurers would be liable for both parts.

SECTION XVII.

PIRACY, ROBBERY, OR THEFT.

THERE can be no piracy or robbery without violence; but this is not necessary to constitute the crime of theft. Piracy and robbery are most usually committed by strangers to the ship; they may, however, be committed by the crew; and the insurers are answerable for such a loss, unless it arose from the fault of the owner. Our policies now usually have the phrase "assailing thieves." This excludes theft without violence, and all theft by those lawfully on board the vessel, as a part of the ship's company. If, after shipwreck, the property is stolen, the insurers are liable, and might be so if there were no insurance against theft, if this was a direct effect of the wrecking.

SECTION XVIII.

BARRATRY.

THIS word means any wrongful act of the master, officers, or crew, as any fraud, cheat, or trick done by them, or either of them, against the owner. If he directed the act, or consented to it, or by his negligence or default caused it,—whether he were actual owner, or apparent or temporary owner by hiring the vessel,—it is no barratry. But it is not necessary that it should be done with an intention hostile to him. For an act otherwise barratrous would be none the less so because the committer of it supposed it would be for the advantage of the owner.

The master being appointed by the owner, and controlled by him, many policies provide that they do not insure against barratry, *if the insured be the owner of the ship*. The purpose of this is obvious; it is to prevent an insurance of the owner against the acts of one for whom the owner ought to hold himself responsible. The effect of the clause is to limit the insurance against barratry to goods shipped by one who is not owner of the vessel.

As a general rule, the insurers are liable for the misconduct of the crew, when all usual and reasonable precautions have been taken by the owner, and his servant, the master, to prevent such misconduct.

SECTION XIX.

CAPTURE, ARREST, AND DETENTION.

THE phrase which refers to these perils is usually in these words: "Against all captures at sea, or arrests, or detentions of all kings, princes, and people." Almost every word of this sentence has been the subject of litigation or of discussion. The provision has been held to apply not only to captures, arrests, or detentions by public enemies, or foreign belligerent powers, but to those by the very government of which the insured is himself a subject, *unless* the same be for a breach of the law by the insured. Then the insurers are not liable, because they never are for the consequence of an illegal act of the insured. By the "people" are understood the sovereign power of a state, what-

ever be its form of government. "Capture" and "seizure" are equivalent; they differ from "detention" in this respect: the two former words mean a taking with intent to keep; the latter, a taking with intent to restore the property. "Arrest" is any taking possession of the property for any hostile or judicial purpose.

SECTION XX.

THE GENERAL CLAUSE.

THIS clause has a very limited operation. We have already remarked, that it is usually restricted to perils of a like kind with those already enumerated; and although this phrase has been declared to be substantial and material, it might be difficult to hold an insurer liable under this clause, when he would not have been liable under some one of the enumerated perils.

SECTION XXI.

PROHIBITED TRADE.

THIS is not the same with contraband trade (which belongs to war), although the words are sometimes used as if they were synonymous. It is perfectly lawful for a ship to break through a blockade if it can, or to carry arms or munitions of war to a belligerent. This would be contraband trade. And it is perfectly lawful for the state whose enemy is thus aided, to catch, seize, and condemn the vessel that does this, if it can. The vessel takes upon itself this risk; and it is not covered by a common policy, unless the purpose is disclosed and permitted. Prohibited trade belongs to a time of peace. It is either trade prohibited by the state to which the ship belongs,—and then it is wholly illegal, and the insurers are not only not answerable under a general policy for a loss occasioned by this breach of law, but an express bargain to that effect would itself be illegal and void,—or it may be trade prohibited only by a foreign state. And then it is not an illegal act in the vessel by whose sovereign it is not prohibited. The intention to incur this extra risk should be communicated; because the insurers should be enabled to take it into consideration. But in practice, our policies generally, if not universally, except expressly the risks arising from prohibited trade.

The parties may always agree to add such risks, or except such, as they choose.

SECTION XXII.

DEVIATION.

As the insurers are entitled to know, either from information given them, or from the known course of the trade, what risks they assume, it is obvious that the insured have no right to change those risks, and that, if they do, the insurers are not held to the new risk. Such a change of risk is called a deviation; it certainly discharges the insurers; and although the word originally meant in law what it means commonly, a departure from the proper course of the voyage, it now means, in the law of insurance, any departure from or change of the risks insured against. And it discharges the insurers, although it does not increase the risk, as they have a right to stand by the exact bargain they have made. There may be a deviation while the ship is in port; or where the insurance is on time, and no voyage is indicated. And a very slight deviation may suffice to discharge the underwriters.

But no deviation discharges the insurers, or, in the language of the law, no change of risk is a deviation, unless it be voluntary, that is, not if there was or seemed to be a sufficient necessity for it.

The proper course—a departure from which is a deviation—is always the usual course, provided there be a usage; for a master is not bound to follow their track wherever one or two have gone before, but must be allowed his own reasonable discretion. If there be no course so well established that every one would be expected to follow it, the master must go to his destined port in the most natural, direct, safe, and advantageous way.

An extraordinary and unnecessary protraction of a voyage would be a deviation. But the mere length of the voyage, without other evidence, would not prove this.

Liberty policies, so called, are often made. That is, the insured is expressly permitted to do certain things, which, without such permission, would constitute a deviation. And a large proportion of the cases on the subject of deviation have arisen under these policies. Most of the phrases commonly used have

been construed by the courts; and generally quite strictly. A liberty to "enter" a port, or "touch" at a place, permits a ship to go in and come out, but it permits little delay, because for delay the word "stay" or "remain" is necessary.

It is certain that no permission is necessary for any change of course or risk that is made for the saving of life, or even for the purpose of helping the distressed. Always provided, however, that the change of course, or the delay, was no greater and no longer continued than this cause for it, actually and rationally considered, required. It is, however, equally well settled, that a change of course or of risk for the purpose of saving property is a deviation not justified by its cause. A delay for the purpose of towing a vessel is certainly a deviation, unless there are persons on board the vessel which is towed, and they can be saved in no other way.

Sometimes it is intended that a ship shall visit many ports, and even go backwards and forwards, at places between the port from which she sails and that at which the voyage is finally to terminate. Such purposes as this are sometimes provided for by a policy on time; and sometimes by express permission to go to and trade at certain ports.

If permission be given to enter and stop at a dozen different ports, the vessel may omit any of them, or the whole, but must visit in the proper order all to which she does go. She cannot go back and forth.

The substitution of a new voyage for that agreed upon is of course a deviation, and one that can seldom or never be justified by any necessity, so as to carry the insurer's liability on the new voyage. If an entirely new voyage is intended, and a vessel sails upon it, but in the same direction in which she would have gone on the insured voyages, the policy never attaches, and the premium is never earned, because the ship never sails on the insured voyage. But if the ship is intended to pursue the insured voyage to its proper terminus, but at a certain point of the voyage to deviate by going into another port, there is no deviation until that point is reached, and the deviation actually begun; because it is certain that no mere intention to deviate discharges the insurers until it is carried into execution; and they are liable for a loss happening before the deviation.

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SECTION XXIII.

THE TERMINI OF THE VOYAGE, AND OF THE RISK.

THESE must be distinctly stated, whether they be termini of time or place. A policy from ——— to ———, or from B to ———, or from ——— to B, would be void. Nor would it be any better if the termini were named with apparent distinctness, but in such wise as to mean nothing, or nothing sufficiently certain.

A policy takes effect from its date, if the bargain was then complete, although not delivered until afterwards. And it may be remarked, that, if there be an unreasonable delay in the sailing of the vessel, the policy never attaches, for the bargain is considered annulled.

A policy on a vessel "at" such a place attaches when she is there in safety. But if there were a policy "to" a place, and another was made out between the same parties "at," or "at and from," the same place, the law would presume that the parties intended that the second policy should attach whenever the first one ceased by the arrival of the ship, without reference to the condition of the ship or her peril at the time.

A policy on goods attaches to them at the time when it would have attached to the vessel had she been insured. The extent which should be given to the meaning of the word "port" is sometimes a question of some difficulty; but in general all places are within a port which belong to it by mercantile usage and acceptance, although not within the same municipal or legal precinct.

"At and from" covers a vessel in a port, as well as after she leaves it. "From" only covers the vessel *after* she gets under way. "At and from," applied to goods, does not cover them in the port when they are on shore and warehoused, nor until they become subject to marine risk, by being water-borne. They are, however, covered, not only when they reach the ship, but as soon as they are put on board of boats or lighters, or any other usual water conveyance to the ship. And if insured to a port, they continue covered after they leave the ship by any usual conveyance for the shore, until they are safely landed. The word "at," applied to an island or a coast, may embrace all the

ports therein, and cover the ship while sailing from one to another. "To a port and a market," covers a voyage to the port, and thence to every place to which, by mercantile usage or reasonable construction, a ship may go thence in search of a market; and even to return to that port, if honestly with intent to learn there where a market could be found.

If the insurance be to "a port of discharge," this does not terminate if the vessel goes to a port for inquiry, or for needful refreshment or repair. If it be "a final port of discharge," the insurance ceases upon such parts of the cargo as are left at one port or another, and continues on the ship, and on all the goods on board, until arrival at the port where they will be finally discharged.

It is generally provided in time policies, that, if the vessel be at sea at the expiration of the time agreed on, the risk shall continue until her arrival at a port of discharge, or at her port of destination. If then, before the expiration of the time, she is actually at sea, or has broken ground for the voyage, or if, when the time expires, she is in a port of necessity or restraint, she is considered at sea, but not otherwise.

The English policies and our own contain a provision that the insurance continues on the ship "until she shall be arrived and moored twenty-four hours in safety;" and on the goods until they be "landed," or "safely landed."

Under this clause, the ship is insured until moored in safety, so far as the perils insured against are concerned, but not against the peculiar and local dangers of the port, or the possibility that a tempest there might injure her when moored; for these dangers continue to exist as long as she stays there, and the liability of the insurers would never terminate. If she enters the harbor, and, before she is moored, is blown off, or ordered into quarantine, she is insured until this delay ceases and she is safely moored in port. And if before or within the twenty-four hours, a dangerous storm begins, but does no damage to her until after the expiration of the twenty-four hours, the risk has terminated, and the insurers are not liable.

SECTION XXIV.

TOTAL LOSS AND ABANDONMENT.

THE law of insurance recognizes an actual total loss, and also a constructive total loss. It is actual when the whole property passes away, as by submersion or destruction by fire. It is a constructive total loss when the ship or goods are partially destroyed, and the law permits the insured to abandon the salvage or whatever is saved, to the insurers, and claim from them a total loss. By "abandonment" is meant, in insurance law, the transferring of the property insured, or what is left of it, to the insurers. The word is used, because originally the insured gave up, renounced, or abandoned the property, saying to the insurers, We will have nothing more to do with it, and you may do with it what you like. And the word is still always used, although now it means a transfer. And in the law of insurance, a constructive total loss is a partial loss made total by an exercise of the right of abandonment. That is, the actual loss took from the insured a part, and the abandonment took the rest, and so they have lost all. A constructive total loss is sometimes called a "technical" total loss.

The abandonment, we say, transfers all that remains of the property to the insurers. If nothing remains, or if that which remains has no value, there need be no abandonment, and this is an actual total loss.

The insured never need make an abandonment if he chooses not to do so. And if from such choice or neglect he makes no abandonment, his claim against the insurers is still valid; but it is a different claim from that which it would have been if he had abandoned, because it is now to be settled as a partial loss, of which we shall speak hereafter. For it is the purpose and effect of an abandonment to convert an actual partial loss into a constructive total loss. And if he makes an abandonment when he has no right to make it, such abandonment is wholly inoperative, unless the insurers choose to accept it; but if they accept it, they must settle the loss as a total loss.

The topics in relation to this subject which we will consider are:—1. The necessity of abandonment. 2. The right of abandonment. 3. The exercise of this right. 4. The acceptance of

the abandonment. 5. The effect of the abandonment, or of the absence of abandonment.

1. OF THE NECESSITY OF ABANDONMENT.—It is said, that if a ship be completely wrecked and reduced to “a mere congeries of planks and iron,” or if she has not been heard from for a sufficiently long time, there need be no abandonment, and the insured may claim as for a total loss, without one. In either case, or any other case, if the insurers pay a total loss, they are entitled to whatever shall come to hand of the property insured. And it is usual, and we think more proper, to abandon in both of these cases.

2. OF THE RIGHT OF ABANDONMENT.—The insured cannot convert every partial loss, however small, into a total loss, by abandonment, transferring the damaged property to the insurers. But by a rule which is nearly universal in this country, and not unknown abroad, if the damage by a peril insured against exceed one-half of the value of the property insured,—whether ship, goods, or freight,—he may abandon the property to the insurers, and claim as for a total loss. But if the vessel actually reach her destined port, she cannot be abandoned, although the repairs would cost more than half of her value.

When we speak in another section of partial loss, it will be seen that, by the established usage of this country, an allowance of “one-third, new for old,” is always made. This means, that if a new thing were given for an old one because the old one had been injured, the insurer would be more than indemnified. The sails, for example, might be so new that they had lost little of their value; or so old, that they were of no value. To avoid inquiring into each case, usage has adopted, as a fair average to apply to all cases, that the thing injured has lost one-third of its value. When it is replaced by repairs, the insured therefore loses one-third of the cost of repair, and the insurers pay two-thirds.

Now our policies provide that there shall be no total loss by abandonment unless the injury exceed fifty per cent. when “estimated as for a partial loss”; that is, one-third off. Consequently, the repairs necessary to restore the vessel to a sound condition must amount to more than seventy-five per cent. of her value when repaired (one-third of which, twenty-five per cent., being cast off, leaves fifty per cent.) before there can be an aban-

donment, which the insurers are bound to accept, and settle the loss as a total loss.

The valuation in the policy, if there be one, generally determines the value on which this estimate is to be made. In New York and in Massachusetts, this seems to be distinctly held; but the courts of the United States and of some of our States incline to say that, whether the policy be valued or open, the value of the ship, the loss of one-half of which authorizes abandonment, is the actual value of the ship at the time the loss occurs, and that this value is to be proved by proper evidence.

A loss by jettison, by salvage, by general average contribution, by wages of sailors paid while they assisted in making the repairs, should be included in the fifty per cent. If the insured have lost a part of his goods by jettison, and have a claim for contribution which is not yet paid, the whole of his loss is to be included to make up the fifty per cent., and the insurers take the claim to contribution by abandonment. Thus, if his loss be by jettison of eight-tenths of his goods, it is eighty per cent., and if he has a claim for contribution in general average for thirty-five per cent., this does not reduce his loss to forty-five per cent., so that he cannot abandon; but he may call his loss eighty per cent. and abandon, and by the abandonment transfer to the insurers his claim for thirty-five per cent. The expense of repairs is to be taken at the place where actually made, or where they must have been made, if made at all.

If a sale be lawfully made by the master, under the authority from necessity which we have considered in the chapter on the Law of Shipping, this is a total loss, and the insured must account for the proceeds.

3. OF THE EXERCISE OF THE RIGHT OF ABANDONMENT.—As an abandonment has the effect of an absolute transfer of the property to the insurers, and is intended for this purpose, it is obvious that it cannot be made by one who is not possessed of such title to the property, or such interest therein, as would enable him to make a valid transfer.

There is no especial form or method of abandonment. But the proper and safe way is to do it in writing, and to use the word "abandon," or "abandonment," although other words of entirely equivalent meaning might suffice. It must be distinct

and unequivocal, and state, at least in a general way, the grounds of the abandonment.

The following would be a good and sufficient form :

(108.)

Abandonment.

NEW YORK, January 9, 1900, 10 o'clock A. M.

I have this day learned that my *(or the)* ship *(or whatever the vessel is)* insured by you *(or of which you have insured the cargo or freight or profits, as the case may be)*, has been wrecked on her voyage from _____ to _____ *(or has met with such or such a disaster, describing it generally)*, and that she now lies at _____ *(or that said cargo or what remains of it is now at _____)*. And I do now and hereby abandon to you the ship, with her cargo and freight *(or whichever of these interests was the subject of insurance)*, and shall claim payment of you as for a total loss.

To the _____ Insurance Company.

(Signature.)

If the abandonment be deficient in form, the insurers will waive any objection of this kind if they call for further proof, and otherwise act as if the abandonment were altogether sufficient.

The insured may abandon at any time when the ship by a peril insured, is taken for an uncertain period from the master's control, and the voyage is broken up and cannot be renewed, unless at a cost which of itself gives this right.

The existence of the right depends upon the actual state of facts at the time, and not upon the supposed facts. Nothing, however, gives the right of instant abandonment, without a faithful endeavor of the master to find if he can, and use if he can, some means of deliverance and safety. But if, when delivered and restored to the master or owner, her damage amounts to more than half of her value, estimated as above stated, "as a partial loss," she may then be abandoned. If the precise voyage insured be broken up by a peril insured against, this justifies an abandonment, although the vessel might be put in condition to pursue a different voyage or render a different service.

As the insurers, who take the salvage (or saved) property by abandonment, have a right to every possible opportunity to make the most of it, it follows as an invariable and universal rule, that the insured must make an abandonment *immediately* after he re-

ceives the intelligence which justifies it; and if he does not, he will be regarded as having elected not to abandon, and no subsequent abandonment will have any effect.

The abandonment may be made on information of any kind, if it be entitled to weight and credence. So even a general rumor, without specific intelligence to the insured, will authorize an abandonment, if the rumor seems to be well grounded and altogether credible.

4. OF THE ACCEPTANCE OF THE ABANDONMENT.—As there is no especial form or method of making an abandonment, so there is no regular and established form of accepting an abandonment. If the insurer, with a sufficient knowledge of the facts, says or does that which induces an honest insured to believe that he has accepted the abandonment, and will pay the loss, and to act on that belief, it is an acceptance, and is so far binding on the insurer. But if he neither says nor does what ought to produce this belief, then he is at liberty to say and prove if he can that the insured had no right to make an abandonment, and that the claim is only one for a partial loss.

5. OF THE EFFECT OF ABANDONMENT.—If insurers pay as for a total loss, this payment entitles them to full possession of all that remains of the property insured, and also of all rights, claims, or interests which the insured has in or to or in respect of the property lost. Hence, if the insured has lost his goods by jettison, and has a claim for a general average contribution, and the insurers pay him for all his goods, they stand in his place, and acquire that claim for contribution which the loss of the goods gave him. And we should, very generally at least, extend this rule to the claim which a mortgagee has on the mortgage for his debt.

By the abandonment, both the owner and the master become to some extent, the trustees and agents of the insurers, in respect to the property abandoned; and are bound to act, in relation to it, with care and honesty. Still, if the property, after abandonment, or after a loss for which there is to be an abandonment, be further lost or wasted, by the bad faith or neglect of the master, or of the consignee of the owner, while they continue to act as such, this loss must be made up by the owner, because, although they are, in a certain sense, agents of the insurer, they are then agents of the owner, and he is responsible for them to the insurer.

Goods are totally lost if destroyed, or if so injured as to have little or no value for the purpose for which they are intended; or if the voyage upon which the insurance on the goods was effected is entirely broken up. But a mere delay gives no right of abandonment. And, in addition to all this, the rule which permits abandonment if more than fifty per cent. be lost, of which we have already spoken, is applicable to goods, in this country; subject, however, to the important qualification, that it does not apply if any substantial portion of the goods arrive at their destination uninjured; or if the goods are insured "free from average." And the rule of abandonment, salvage, and transfer to the insurers, is the same in relation to goods as to the ship.

SECTION XXV.

PARTIAL LOSS.

A **PARTIAL** loss is simply a loss of a part, and not of the whole. The principal questions relating to it arise out of the rule of one-third off, new for old, which has been already spoken of in the chapter on Shipping.

The first effect of this rule is, that the thing or the part lost or injured, whether it be new or old, worn out or not worn at all, must be replaced or repaired in adaptation and conformity with the vessel, in the same way in which it would be if she were properly repaired at the owner's port, by his orders.

This third part is generally deducted from dockage, moving the ship, and similar expenses, provided they are incidental to the main purpose of repair.

The value of the old materials should be deducted from the expense of repair, before the third "new for old" is taken off.

If an owner effects insurance on a part only of the value of the property insured,—as if for \$5,000 on a ship valued at \$10,000,—he is insured for half, and is his own insurer for the other half, and he recovers in the same proportion from the insurers in case of a partial loss. Thus, if there be a partial loss of sails and rigging, or of repairs amounting, after one-third is deducted, to \$2,000, one-half of this is the loss of the insurers, and they pay it to him, and one-half is his own loss.

The insurer takes no part of the risk of the market, and his liability is the same whether that rises or falls, although this

may make a great difference as to the amount lost by the insured. What goods have lost from their original invoice value is the amount which the insurer pays. Thus, if he insures \$10,000 on goods of which that is the original value, and they are so far damaged by a sea-peril, that at the port of discharge they bring, or are worth, only half of what they would have brought if they had not been damaged, the insurers are liable for \$5,000, or that half, although the goods thus damaged may bring in the market of arrival the whole of their invoice cost or more. And if they bring but a quarter of it, the insurers pay no more than one-half, because the rest of the loss is caused by the falling market.

If the goods have sustained damage or loss by leakage, or by breakage, or by natural decay, or from inherent defect in quality,—that is, not by a sea-peril,—before the partial loss occurs, a proportional deduction should be made from the partial loss, as the insurers are liable only for the injury resulting from that loss, and not for any part of that which already existed when the loss took place, or which has occurred since from causes against which they did not insure.

We may add that any sum paid by the owner of property insured as a contribution to general average is a loss by sea peril for which the insurer is liable.

CHAPTER XXVIII.

FIRE INSURANCE.

SECTION I.

THE USUAL SUBJECT AND FORM OF THIS INSURANCE.

THIS kind of insurance is sometimes made to indemnify against the loss by fire of ships in port; more often of warehouses, and mercantile property stored in them; or of personal property in stores or factories, in dwelling-houses or barns, as merchandise, furniture, books and plate, or pictures, or live stock. But by far the most common application of this mode of insurance is to dwelling-houses and other buildings.

Like marine insurance, it may be effected by any individual who is capable of making a legal contract. In fact, however, it is always, or nearly always, in this country, and we suppose elsewhere, made by companies.

There are stock companies, in which certain persons own the capital and take all the profits by way of dividends; and mutual companies, in which every one who is insured becomes thereby a member, and the net profits, or a certain proportion of them, are divided among all the members in such manner as the charter or by-laws of the company may direct. Sometimes both kinds are united, in which case there is a capital stock provided, as a permanent guaranty fund, over and above the premiums received, and a certain part or proportion of the net profits is paid by way of dividend upon this fund, and the residue divided among the insured.

Of late years the number of mutual fire-insurance companies has greatly increased in this country, and much the largest amount of insurance against fire is effected by them. The principal reason for this is, undoubtedly, their greater cheapness; the premiums required by them being, in general, much less than in the stock offices. For example, if the insurance is effected for seven years, which is a common period, an amount or percentage is charged, about the same as that charged by the stock companies, or a little more. Only a small part of this is taken in cash; for the rest a premium note or bond is given, promising to pay whatever part of the amount may be needed for losses which shall occur during the period for which the note is given. More than this, therefore, the insured cannot be bound to pay, and it frequently happens that no assessment whatever is demanded; and sometimes, where the company is well established and does a large business upon sound principles, a part of the money paid by him is refunded when the insurance expires, or credited to him on the renewal of the policy, if such be his wish.

The disadvantage of these mutual companies is, that the premiums paid and premium notes constitute the whole capital or fund out of which losses are to be paid for. To make this more secure, it is provided by the charter of some companies, that they shall have a lien on the land itself on which any insured building stands, to the amount of the premium. But while this adds very much to the trustworthiness of the premium notes, and so

to the availability of the capital, it is, with some persons, an objection, that their land is thus subjected to a lien or incumbrance.

There is another point of difference which recommends the stock company rather than the mutual company. It is that the stock company will generally insure more nearly the full value of the property insured; while the mutual companies are generally restrained by their charters from insuring more than a certain proportion, namely, from one-half to three-fourths of the assessed value of the property. It would follow, therefore, that one insured by a mutual company cannot be fully indemnified against loss by fire; and may not be quite so certain of getting the indemnity he bargains for as if he were insured by a stock company.

The method and operation of fire insurance have become quite uniform throughout this country; and any company may appeal to the usage of other companies to answer questions which have arisen under its own policy; only, however, within certain rules, and under some well-defined restrictions.

In the first place, usage may be resorted to for the purpose of explaining that which needs explanation, but never to contradict that which is clearly expressed in the contract. And no usage can be admitted even to explain a contract, unless the usage be so well established, and so well known, that it may reasonably be supposed that the parties entered into the contract with reference to it. And not only the terms of the contract must be duly regarded, but those of the charter or act of incorporation.

In regard to the execution of a fire policy, and what is necessary to constitute such execution, we say that delivery is not strictly necessary, and a signed memorandum may be sufficient, or, indeed, an oral bargain only, and that this insurance may be effected by correspondence, and that the contract is completed when there is a proposition and assent, as we have already said in reference to marine insurance.

It has been held in an action on a fire policy, as doubtless it would be on a marine policy, that a memorandum made on the application book of the company by the president, and signed by him, was not binding, where the party to be insured wished the policy to be delayed until a different adjustment of the terms could be settled, and after some delay was notified by the company to call and settle the business, or the company would not

be bound, and he did not call; because there was here no consummated agreement. So, too, a subsequent adoption or ratification of a policy made by an agent is equivalent, either in a fire or marine policy, to the making originally of the contract.

SECTION II.

THE CONSTRUCTION OF POLICIES AGAINST FIRE.

It is sufficient if the words of the policy describe the persons, the location, and the property, with so much distinctness that the court and jury have no difficulty in determining their identity with a certainty which prevents any real and substantial doubt.

In the construction of this as of other contracts, the intention of the parties is a very important and influential guide; but it must be the intention *as expressed*; for otherwise, a contract which was not made would be substituted for that which was made; and evidence from without the contract would be permitted to vary and to contradict it. Thus, where stock in trade, household furniture, linen, wearing-apparel, and plate were insured in a policy, the court held that the term "linen" must be confined to "household linen," and would not include linen drapery goods purchased on speculation. In a case where the policy required that the houses, buildings, or other places where goods are deposited and kept, shall be truly and accurately described, and the place was described as the dwelling-house of the insured, whereas he occupied only one room in it, as a lodger, this description was held sufficient.

It was held in another case, that the insurance by an inn-keeper against fire of his "interest in the inn and offices," does not cover the loss of profits during the repair of the damaged premises. And in another, the words "stock in trade," when used in a policy of insurance in reference to the business of a mechanic, as a baker, were held to include not only the materials used by him, but the tools, fixtures, and implements necessary for the carrying on of his business; and the words in question were held to have a broader application to the business of mechanics than to that of merchants.

A policy upon wearing-apparel, household furniture, and the stock of a grocery, covers linen sheets and shirts actually laid in

for family use, and such as were laid in for sale or traffic in the usual way, in the store; but not such as, being smuggled, were concealed and intended for secret sale.

There is no material difference in respect to mistake, or the correction of it, between fire policies and marine policies; and the law on this subject in relation to the latter has already been stated. And the same remark may be extended to the rule respecting the admission, as a part of the contract, of a memorandum on the back of the policy, or attached to it by a wafer, and neither referred to in the policy itself, nor signed by the insurer.

It is a general rule with our mutual insurance companies, that every one who is insured becomes a member of the company.

And it follows, necessarily, that every insured party is bound by all the laws and rules of the company, as by laws and rules of his own making.

The mutual fire-insurance companies, by a law or rule which is perhaps universal, require that an application shall be made in writing; and this written application is after a peculiar form, prescribed by the rules. It always contains certain definite statements, which relate to those matters which affect the risk of fire importantly. In each form of application, sundry questions are put, which are quite numerous and specific, and are those which experience has suggested as best calculated to elicit all the information needed by the insurers for the purpose of estimating accurately the value of the risk they undertake. Specific answers must be given to all these questions. And this application, with all these statements, questions, and answers, is expressly referred to in the policy, and made a part of the contract.

It is common to state in the printed part of the formal application, that it is made on such and such conditions; and these usually follow those statements which are deemed the most material in estimating the risk. These would be considered as express conditions, and therefore the substantial truth of all of them is a *condition precedent* to any right of indemnity in the insured party. By the legal phrase *condition precedent*, is meant a condition which must be fully complied with before the contract can take effect. Hence, if any of these statements are false, the policy will be void.

Sometimes there is no distinct application in writing, but the policy itself states the facts relied upon. For this purpose it contains many blanks, which are filled up according to the circumstances of each case. It may happen that what is written in these places may be inconsistent with what is printed; and then it is a general rule that what is written prevails, as that is more immediately and specifically the act of the parties, and may be supposed to express their precise purpose better than the printed phrases which were prepared without especial reference to any particular case. But this rule would not be applied where it would obviously operate injustice.

Policies of fire insurance, especially of mutual companies, often contain a scale of premiums, as calculated upon different classes of buildings, of stocks in trade, or other property, in conformity with what is thought to be the greater or less risk of fire in each case. This is a matter of special importance; and if a statement were made by an applicant which put his building or property into a class of which the risk and premiums were less than for the class to which the building or property actually belonged, and in that way an insurance was effected at such less premium, the policy would undoubtedly be void, even if the false statement were made innocently.

When certain trades or occupations, or certain uses of buildings, or kinds and classes of property, are enumerated as "hazardous," or otherwise specified as peculiarly exposed to risk, the rule, *The expression of one thing excludes what is not expressed*, is applied, and sometimes with severity. This is better illustrated by marine insurance. Thus, in a case in New York, precisely in point, dried fish were enumerated in the memorandum clause as free from average, and "all other articles perishable in their own nature." It was held that the naming of one description of fish implied that other fish were not intended; and that the subsequent words, "all other articles perishable in their own nature," were not applicable, and did not repel this implication. The same rule would be applied, for the same reason, and in the same way, to cases of fire insurance.

If the printed conditions represent one class of buildings, or goods, or property, as more hazardous than another, it would not be competent for the insured, whose property was of that kind, to prove by other testimony that it was not more hazardous in

fact. Moreover, a description of the property insured, as it is a description for a contract on time, is held to amount to an agreement that the property shall continue within the class where it is put, or at least shall not enter into another that is declared to be more hazardous, during the operation of the policy. There must, however, be a rational, and perhaps a liberal, construction of this rule. Thus, it does not apply where a single article, or one or two, are kept in a store as a part of the stock of goods, although that article, as cotton in bales, is among those enumerated as hazardous. So if the "storing of spirituous liquors" is prohibited, the keeping of wine or brandy in a private house for consumption, or even for sale by retail to boarders, would not discharge the insurers.

In New York it was held that where oils and turpentine, which were classed among hazardous or extra-hazardous articles, were introduced for the purpose of repairing and painting the dwelling insured, and the dwelling was burned while being so repaired, the insurers were liable. But if the building is generally appropriated to a more hazardous occupation than the proposals or the policy indicate, or if the jury find that the introduction of these goods materially increased the actual risk, evidence would be received as to the intention of the parties to the contract. And the true meaning of the contract and the intent of the parties would be considered. Thus, where the "storing" of certain goods was prohibited, as "hazardous," it was held that the having a pipe or two of such articles in the cellar, from which smaller vessels in the store were replenished, did not come within the meaning of the word "storing" in the policy, any more than would the keeping of such articles for home consumption in a dwelling-house insured by a similar policy. So a description of a house as "at present occupied as a dwelling-house, but to be hereafter occupied as a tavern, and privileged as such," is only permission that it should be a tavern, and creates no obligation to occupy and keep it as a tavern on the part of the insured. But if the language is, "to be occupied as so or so, but *not*" in some other certain way, this restriction is a part of the bargain; and, if the building is occupied in the way prohibited, the insurers are discharged.

So if the premises are described as a "private residence," the insurance is not avoided by the fact that the occupants moved

out of the house, leaving it vacant, and not the "residence" of any one, unless the jury find that the risk was thereby materially increased. But where the property was represented as a "tavern barn," and the insured permitted its occupation as a livery-stable, the policy was held to be discharged, although the keeper of the livery-stable was removable at the pleasure of the insured. Where a building insured by a company was represented, at the time of effecting the insurance, as connected with another building on one side only, and before the loss happened it became connected on two sides, the policy was held not to be avoided unless the risk thereby became greater.

The general subject of alterations of property under insurance against fire is not without difficulty. On the whole, however, mere alterations, although expensive and important, do not necessarily and of themselves avoid the insurance or discharge the insurers; but they have this effect, if they are found by the jury to increase the risk materially; or if they are specifically prohibited in the policy.

Still other questions may arise where material alterations are made, all of which are not easily disposed of. The following are instances. Suppose one gets his dwelling-house insured for seven years, truly describing it as having a shingled roof. After two or three years he determines to take off the shingles, but says nothing to the insurers about it. If he now puts on slates, or a metallic covering which does not require soldering, he does not increase the risk; nor is the work of putting on the new covering hazardous, and we see no grounds for its having any effect on the policy. But suppose the new metallic covering is secured by soldering. This is certainly a hazardous operation. And if the building takes fire in consequence of this operation, the insurers are certainly discharged.

If the operation is conducted safely through, and the work is entirely finished, we consider it clear that this greater hazard for a time has no effect whatever on the policy after that time, and after all the greater hazard has expired. But let us suppose that while this operation is going forward, and the house is thereby certainly exposed to an increase of risk, the house is set on fire by an incendiary,—without the slightest reference to this alteration,—and burns down. It is not, perhaps, settled, either by authority or practice, whether the insurers are or are not dis-

charged. I am, however, of opinion that the principles of insurance would lead to the conclusion, that, if the house be burned from a perfectly independent cause, during an increase of risk incurred for good cause and in good faith, the insurers are not thereby discharged. It is, however, certain, that it is always prudent to obtain the consent of the insurers to any proposed alteration, and policies frequently so require. If such consent be asked, and refused, we do not see that the insurers stand on any better footing, or the insured on any worse one; and if the alterations are made and a loss occurs, we should say that the insurers would not, generally at least, be discharged because of their refusal, unless they would have been discharged if the alteration had been made without their knowledge. For if they have a right to object or refuse, it could only be because the contract in effect prohibited this alteration; and then their refusal was not wanted for their defense. And if they have no right to refuse, they can acquire no rights by the refusal.

If the alteration be of a permanent character, and cause a material increase of the danger of fire, then it is a substantial breach of contract; and we should hold that the insurers were discharged as soon as the alteration was made, and indeed as soon as the making of it, or preparations for it, as scaffolding or carpenter's work, materially increased the risk. And they are discharged equally, whether the fire be caused by the alteration, or by the work done, or by some wholly independent matter.

The insured may make reasonable repairs without especial leave, and the insurers are liable, although the fire take place while the repairs are going on; and even if it be caused by the repairs.

It may be added, that our fire policies now in use frequently give the insured the right of keeping the property in repair. The failure of the insured to repair a defect in the building, arising after the contract is made, does not prevent the insured from recovering unless he was guilty of gross negligence.

SECTION III.

THE INTEREST OF THE INSURED.

ANY legal interest is sufficient. And if it be equitable in the sense that a court of equity will recognize and protect it, that is

sufficient; but a merely moral or expectant interest is not enough. So one has an insurable interest in a house placed on another's land with that other's consent, but not if placed there without license or shadow of title. So, too, one who has made only an oral bargain with another to purchase the other's house, cannot insure it; but if there be a valid contract in law, or if by writing or by part performance it is enforceable in a court of equity, the purchaser may insure. So, if a debtor assign his property to pay his debts, he has an insurable interest in it until the debts are paid, or until the property be sold.

A partner may have an insurable interest in a building purchased with partnership funds, although it stands upon land owned by the other partner. A mortgagor may insure the whole value of his property, even after the possession has passed to the mortgagee, if the equity of redemption be not wholly gone. So he may if his equity of redemption is seized on execution, or even sold, so long as he may still redeem. And in case of loss he recovers the whole value of the building, if he be insured on it to that amount.

A mortgagor and a mortgagee may both insure the same property, and neither need specify his interest, but simply call it his property. The mortgagee has an interest only equal to his debt, and founded upon it; and if the debt be paid, the interest ceases, and the policy is discharged; and he can recover no more than the amount of his debt.

It has been held, that if a mortgagor is bound by his contract with the mortgagee to keep the premises insured for the benefit of the mortgagee, and does keep them insured in his own name, the mortgagee has an equitable interest in or lien upon the proceeds of the policy.

One who holds property only in right of his wife may insure the property, even if his wife be only a joint tenant. And a tenant for years, or from year to year, may insure his interest, but would recover only the value of his interest, and not the value of the whole property.

We have said that, generally, any one having any legal interest in property may insure it as his own. But there is one important exception to or modification of this rule. By the charters of many of our mutual insurance companies, the company has a lien, to the amount of the premium note, on all property

insured. It is obvious, therefore, that no such description can be given, or no such language used, as would induce the company to suppose they had a lien when they could not have one, or would in any way deceive them as to the validity or value of their lien. In all such cases all incumbrances must be stated, and the title or interest of the insured fully stated in all those particulars in which it affects the lien.

A trustee, agent, or consignee may insure against fire, as he may against marine loss. Generally, the consignee is not bound to insure against fire, but may, at his discretion. He may insure, expressly, his own interest in them for advances, or the owner's interest. It has been held that a consignee may, by virtue of his implied interest and authority, insure, in his own name, goods in his possession against fire, to their full value, and recover for the benefit of the owner. And if the interest be not expressed, the policy will be construed as not covering the interest of the owners, if, upon a fair construction of the words and facts, it seems to have been the intention of the parties only to secure the consignee's interest. And an insurance against fire upon merchandise in a warehouse, "for account of whom it may concern," protects only such interests as were intended to be insured at the time of effecting the insurance.

It is now common for a commission merchant to cover in one policy, in his own name, all the goods of the various owners who have consigned goods to him. It has been held, that the words "goods held on commission," in fire policies, have an effect equivalent to the words "for whom it may concern," in marine-policies.

A person having a lien on a building under a State law has an insurable interest in the building.

A consignee of goods sent to him, but not received, may insure his own interest in them. So, any bailee (which means any person to whom property has been delivered for any purpose) who has a legal interest in the chattels which he holds, although this be temporary and qualified, may insure the goods against fire. Thus a common carrier by land, who has a lien on the goods, and is answerable for them if lost by fire (unless it be caused by the act of God or the public enemy), may insure the goods to their full value against fire.

The insurers must know whom they insure, for they may have a choice of persons, and it is important to them to know whether they are to depend on the care and honesty of this man or that man. The insured must so describe the owner as not to deceive them on this point, and so he must the kind of ownership. Thus, if he aver an entire interest in himself, he cannot support this by showing a joint interest with another; and if in his action he declare the latter, proof of the former is not sufficient.

So, too, there must be actual authority to make the insurance. This may be express, or in some cases implied, as it seems to be implied with the consignee, or the carrier, and perhaps, generally, with any one who has an actual possession of, interest in, and lien on, the property. But a tenant in common does not derive from his cotenancy authority to insure for his cotenant; nor could a master of a ship or a ship's husband, merely as such, insure the owner's interest against fire.

SECTION IV.

DOUBLE INSURANCE.

By this, the party originally insured becomes again insured. If, by a double insurance, the insured could protect himself over and over again, he might recover many indemnities for one loss. This cannot be permitted, not only because it is opposed to the first principles of insurance, but because it would tempt to fraud and make it very easy.

In this country, fire policies usually contain express and exact provisions on this subject. They vary somewhat, but generally they require that any other insurance must be stated by the insured, and indorsed on the policy; and it is a frequent condition, that each office shall in that case pay only a ratable proportion of a loss; and it is often added, that, if such other insurance be not so stated and indorsed, the insured shall not recover on the policy. And it has been held that such a condition applies to a subsequent as well as to a prior insurance; or to an insurance of any part of the property covered by the other policy. Nor will a court of equity relieve, if sufficient notice and indorsement have not been made. But it has been held that a valid notice might be given to an agent of the company, who was authorized

to receive applications and survey property proposed for insurance.

In some instances the charter of the company provides that any policy made by it shall be avoided by any double insurance of which notice is not given, and to which the consent of the company is not obtained, and expressed by their indorsement in the policy. But this would not apply to a non-notice by an insured of an insurance effected by the seller on the house which the insured had bought, if this policy were not assigned to the buyer.

SECTION V.

WARRANTY AND REPRESENTATION.

A WARRANTY is a part of the contract; it must be distinctly expressed, and written either in or on the policy, or on a paper attached to the policy, or, as has been held, on a separate paper distinctly referred to and described as a part of the policy. Then it operates as a condition precedent; that is, as a condition of the policy, which if it be not performed, the policy never takes effect; if it be not performed, there is no valid contract; nor can the non-performance be helped by evidence that the thing warranted was less material than was supposed, or, indeed, not material.

It may be a warranty of the present time, or, as it is called, affirmative, or of the future, and then it is promissory. And it may be, although of the present and affirmative, a continuing warranty, rendering the policy liable to avoidance by a non-continuance of the thing which is warranted to exist. Whether it is thus continuing or not must evidently be determined by the nature of the thing warranted. A warranty that the roof of a house is slated, or that there are only so many fire-places or stoves, would, generally at least, be regarded as continuing; but a warranty that the building was five hundred feet from any other building, would not cause the avoidance of the policy if a neighbor should afterwards put up a house within one hundred feet, without any act or privity of the insured.

We have seen, that statements made on a separate paper may be so referred to as to make them a part of the policy. And it is usual to refer in this way to the written application of the insured, and to all the written statements, descriptions, and an-

swers to questions, which he makes for the purpose of obtaining insurance. But a fair and rational, or, in some cases, a liberal construction, will be given to such statements.

It is quite certain that the word warranty need not be used, if the language is such to import unequivocally the same meaning. And an indorsement made upon the policy before it is executed may take effect as a part of it.

A statement may be introduced into the policy itself, and be construed not as any warranty, but merely as a license or permission of the insurers that premises may be occupied in a certain way, or some other fact occur without prejudice to the insurance.

A representation, in the law of insurance, differs from a warranty, in that it is not a part of the contract. If made after the signing of the policy or the completion of the contract, it cannot of course affect it. If made before the contract, and with a view to effecting insurance, it is no part of the contract; but if it be fraudulent, it makes the contract void. And if it be false, and known to be false by him who makes it, it is his fraud. To have this effect, however, it must be material; and there is no better test or standard for this than the question, whether the contract would have been made, and in its present form or on its actual terms, if this statement had not been made and believed by the insurers. If the answer is, that the contract would not have been made if this statement had not been made, it is material; otherwise, not. The general rule is, that the statements in the application on a separate sheet have the effect only of representations, and do not avoid the policy unless false in a material point, or unless the policy makes them specially a part of itself, and gives them the effect of warranties. A representation may be more certainly and precisely proved if in writing; but it will have its whole force and effect if only oral.

In some instances, by the terms of the policies, any misrepresentations or concealments void the policy. And it is held that the parties have a right to make such a bargain, and that it is binding upon them; and the effect of it would seem to be to give to representations the force and influence of warranties.

There seems to be this difference between marine policies and fire policies. In the former, a material misrepresentation avoids the policy, although innocently made; in the latter it has this

effect only when it is fraudulent. This distinction seems to rest upon the greater capability, and therefore greater obligation, of the insurers against fire to acquaint themselves fully with all the particulars which enter into the risk. For they may do this either by the survey and examination of an agent, or by specific and minute inquiries. If a *warranty* is broken, however innocently, it avoids all policies, whether material or not. And this difference between a *warranty* and a *representation* is very important.

Concealment is the converse of misrepresentation. The insured is bound to state all that he knows himself, and all that it imports the insurer to know, for the purpose of estimating accurately the risk he assumes. A suppression of the truth has the same effect as an expression of what is false. And the rule as to materiality and as to a substantial compliance is the same.

Even the rumor of an attempt to set fire to a neighboring building should be communicated; because the insurer should be informed of any unusual fact, or any circumstance relating to the building materially enhancing the risk.

Insurers must be understood as knowing all those matters of common information that are as much within their reach as in that of the insured; and these need not be especially stated. But any special circumstance, as a great number of fires in the neighborhood, and the probability or belief that incendiaries were at work, should certainly be communicated; and silence on such a point—especially if the place of business of the insurers was at a considerable distance from the premises—would operate as a fraud, and avoid the policy. And any questions asked must be answered, and all answers must be as full and precise as the question requires. If there were a provision in the policy that a certain fact, if existing, must be stated, silence in reference to it would avoid the policy, however immaterial the fact. Concealment in an answer to a specific question can seldom or never be justified by showing that it was not material. Thus, in general, nothing need be said about title. But if it be inquired about, full and accurate answers must be made.

Where the insurance company has, by the terms of the policy, a lien upon or interest in the premises insured, to secure the premium note, here it is obvious that any concealment of incumbrance or defect of title would operate as a fraud, and defeat the

policy. But in all such cases it is probable that specific questions are put respecting the estate and title of the insured.

It is often required that all buildings standing within a certain distance of the property insured shall be stated; but this might not always be considered as applicable to personal and movable property. Still, an insurance of chattels, described as in a certain place or building, would be held to amount to a warranty that they should remain there; or rather it would not cover them if removed into another place or building, unless, by some appropriate phraseology, the parties expressed their intention that the insured was to be protected as to this property wherever it might be situated. It is not uncommon to insure goods that are in course of transit, against fire; but then it is usual to name the places from which and to which the goods are passing.

SECTION VI.

THE RISK INCURRED BY THE INSURERS.

At the time of the insurance, the property must be in existence, and not on fire, and not at that moment exposed to a dangerous fire in the immediate neighborhood; because the insurance assumes that no unusual risk exists at that time.

The risk taken is that of fire. And therefore the insurers are not chargeable if the property be destroyed or injured by the indirect effect of excessive heat; or by any effect which stops short of ignition or combustion, when this heat is purposely applied, and the injury is caused by the negligence of the person in charge of it. Where, however, an extraordinary fire occurs, the insurers are clearly liable for the direct effects of it, as where furniture or pictures are injured by the heat, although they do not actually ignite.

And they are liable for the injury from water used to extinguish the fire; and for injury to or loss of goods caused by their removal from immediate danger of fire; but not if removed from a mere apprehension from a distant fire, even if it be reasonable; and not if the loss or injury might have been avoided by even so much care as is usually given in times of such excitement and confusion.

In some instances, the policies require that the insured should use all possible diligence to preserve their goods; and such a

clause would strengthen the claim for injury caused by an endeavor to save them by removal. So the insurers are liable for injury or loss sustained by the blowing up of buildings to arrest the progress of a fire.

Lightning is not fire; and if property be destroyed by lightning, the insurers are not liable, unless there was also ignition; or unless the policy expressly insures against lightning.

An explosion caused by gunpowder is a loss by fire; not so is an explosion caused by steam.

Whether, when the negligence of the insured or his servants is to be considered as the sole or direct cause of the fire or loss, the insurers can be held, has been somewhat considered. And as this is the most common and universal danger, and the very one which induces most persons to insure, there has been some disposition to say that no measure or kind of mere negligence can operate as a defense. And in effect this is almost the law. But if the loss be caused by negligence of the insured himself, of so extreme and gross a character that it is hardly possible to avoid the conclusion of fraud, the defense might be a good one, although there were no direct proof of fraud. That the fire was caused by the insanity of the insured should be no defense.

SECTION VII.

VALUATION.

VALUATION, precisely as it is understood in a marine policy, seldom enters into a fire policy,—never, perhaps, in a policy made by any of those mutual companies who now do a very large part of the insurance of this country. And quite seldom is a building valued when insured by a stock company. If a loss happens, whether it be total or partial, the insurers are bound to pay only so much of the sum insured as will indemnify the assured. But, as care is usually taken—and sometimes required by law—not to insure upon any house its whole value, it seldom happens, and, if the proper previous precautions are taken, should never happen, that any question of value arises in a case of a total destruction of a building by fire. In a majority of the States it is now provided by statute that in case a building is wholly destroyed by fire, the amount named in the policy shall be conclusively

taken to be the true value of the property, and the amount recoverable under the policy.

But mutual companies are usually forbidden by their charter to insure more than a certain proportion of the value of a building; and this requires a valuation in the policy, which is conclusive, for some purposes, against both parties. Of course, the insurers can never be held to pay more than the sum insured. And if their charter or by-laws permit a company to insure only a certain proportion of the value, as three-fourths,—on the one hand, if the company insure more than that proportion, as \$3,500 on property valued at \$4,000, they are held to pay only \$3,000, and the assured cannot show that the building was really worth more than \$4,000; and, on the other hand, the valuation, if not fraudulent, is conclusive against the insurers if the building is destroyed, and they cannot show, in defense, that the building was worth less.

I know nothing to prevent the parties from making a valued policy, if they see fit to do so, although this has been questioned. It is not uncommon for companies who insure chattels,—as plate, pictures, statuary, books, or the like,—to agree on what shall be the value in case of loss.

Sometimes the policy reserves to the insurers the right to have the valuation made anew by evidence, in case of loss. Then if a jury find a less valuation, the insurers pay the same proportion of the new value which they had insured of the former valuation.

The value which the insurers of goods must pay is their value at the time of the loss. And it has been held, that a fair sale at auction, with due precaution, will be taken to settle that value after the fire, provided the insurers have reasonable notice or knowledge that the auction is to take place.

The valuation determines the amount which the insurers must pay only in case of total destruction. If the building is only injured by fire, the insurers may either repair it, or pay the cost of repairing it.

SECTION VIII.

ALIENATION.

POLICIES against fire are personal contracts between the insured and the insurers, and do not pass to any other party, without the express consent of the insurers.

It is essential to the validity and efficacy of this contract, that the insured have an interest in the property when he is insured, and also when the loss takes place; for otherwise it is not his loss, and he can have no claim for indemnity. If, therefore, he alienates the whole of his interest in the property before the loss, he has no claim; and if he alienates a part, retaining a partial interest, he has only a partial and proportionate claim.

After a loss has occurred, the right of the insured to indemnity is vested and fixed; and this right may be assigned for value, so as to give an equitable claim to the assignee, without the consent of the insurers.

Policies against fire contain a provision that an assignment of the property, or of the policy, shall avoid the policy. So, generally, it is hardly worth while to inquire what right an assignee without consent would acquire at common law, or in equity, where there is no such provision.

A dissolution of the partnership before loss, and a division of the goods, so that each partner owned distinct portions, was held to be in violation of a condition against "any transfer or change of title in the property insured."

A conveyance by one insured, intended to secure a debt, will be treated in a court of equity as a mortgage, and therefore it does not terminate the interest of the insured. A contract to convey is not an alienation. Nor is a conditional sale, where the condition must precede the sale, and is not yet performed. Nor is a mortgage, not even after breach, and perhaps entry for a breach, and not until foreclosure. Nor selling and *immediately* taking back. Sometimes alienation by mortgage is directly prohibited.

If several estates are insured in one policy, and one or more are aliened (or conveyed away), the policy is void as to those only which are aliened. If many owners are insured in one policy, a transfer by one or more to strangers, without the act or concurrence of the other owners, will avoid the policy for only so much as is thus transferred.

In practice, care should be taken to have all such transfers regularly made and notified, and the consent of the insurer obtained, fully authorized, and duly indorsed or certified, and all the rules or usages of the insurers in this respect complied with.

SECTION IX.

NOTICE AND PROOF.

WHERE the policy requires a certificate of the loss, the production of it is a condition precedent to any claim for payment. And it must be such a certificate as is required; but a substantial compliance with its requirements is sufficient. So, too, if the notice is to be given *forthwith*, there must be no unreasonable or unnecessary delay. And all the circumstances of the case are considered, in determining whether there was or was not due diligence. Where a certificate is required to be furnished "as soon as possible," it is still sufficient if it be furnished within a reasonable time. But where the fire took place in November, and the account of loss was not furnished till the March following, it was held not to be a compliance with the conditions. Generally, this is a question for the jury.

In fire policies, as the premises may be supposed always open to the inspection of the agents of the insurers, a general notice of the fire will be enough.

SECTION X.

ADJUSTMENT AND LOSS.

INSURERS against fire are not held to pay for loss of profits, gains of business, or other indirect and remote consequences of a loss by fire. We do not know, however, why profits may not be expressly insured against fire, where it is not forbidden by, or inconsistent with, the charter of the insurers.

There is one wide difference between the principle of adjustment of a marine policy and of a fire policy. In the former, if a proportion only of the value is insured, the insured is considered as his own insurer for the residue, and only an equal proportion of the loss is paid. Thus, if, on a ship valued at \$10,000, \$5,000 be insured, and there is a loss of one-half, the insurers pay only one-half of the sum they insure, just as if some other insurer had insured the other \$5,000. But in a fire policy, the insurers pay in all cases the whole amount which is lost by fire, provided only, that it does not exceed the amount which they insure.

Most of the fire policies used in this country give the insurers the right of rebuilding or repairing premises destroyed or injured by fire, instead of paying the amount of the loss. If, under this power, the insurers rebuild the house insured, at a less cost than the amount they insure, this does not exhaust their liability; they are now insurers of the new building for the difference between its cost and the amount they have insured. And if the new building burns down, or is injured while the policy continues, the insured may claim so much as, added to the cost already incurred, shall equal the sum for which he was insured.

It may be important to add, that, under our common mutual policies, the insured will also be liable for assessments for losses after the destruction of his building by fire, during the whole term of the policy.

There is no rule in fire insurance similar to that which makes a deduction in marine insurance, of one-third, new for old. Still, the jury, to whom the whole question of damages is given, are to inquire into the greater value of a proposed new building, or of a repaired building, and assess only such damages as shall give the insured complete indemnity.

Where insurers reserve a right to replace articles destroyed, if the insured refused to permit them to examine and inventory the goods that they might judge what it was expedient for them to do, such conduct on the part of the insured would be evidence to the jury of great weight, to prove an overstatement of loss.

I have not thought it would be useful to give Forms of various policies. Applicants never make them, as they are always furnished by the insurance companies; each one having its own form, and using no other. In many of the States there is a standard form which all companies insuring property in the State are required to use. But the following Forms, of immediate notice of loss, of a later and fuller statement under oath, with a magistrate's certificate, and assignments of policies, may be found useful. They must be all adapted, in practice, to the peculiar circumstances of each case.

(109.)

To the _____ Fire-Insurance Company.

Take Notice, That on the _____ day of _____ inst. (or last) a fire broke out in the building No. _____ in _____ Street, in the city of _____ (or otherwise describe the location), whereon I am insured by you,

by your policy, No. _____ the sum of _____ dollars. I have not yet learned and do not know, in what way the fire was caused; but as soon as I am able, I will give you further information on the subject. (*If the insured or his agent knows, or has reasonable cause for supposing, how the fire was caught, he should say so, and state what particulars he can.*)

The house was wholly (or partially) destroyed by fire; and I shall claim a payment from you under your policy.

Written and sent this _____ day of _____ in the year _____

(Signature.)

Witness to the signature and sending.

(Signature of Witness.)

Some insurance companies, and, indeed, the express provisions of some policies, require that a sworn statement of the facts and circumstances of the loss, and the particulars of the claim, be given to the insurance company, with the certificate of a magistrate. I do not know that this course might not be always prudent. The form in which it is done must vary in each case, and be adapted to the peculiarities of that case. But the following Form will generally be a safe guide.

(110.)

To the _____ Insurance Company.

Whereas the said _____ Insurance Company, by their policy numbered _____, and dated on the _____ day of _____ in the year _____ caused me to be insured in the sum of _____ dollars against loss or damage by fire to the following-described building; that is to say (*here describe or designate the building sufficiently to show clearly where and what it was, taking the description from the policy, but not copying it at length*). Now, I, the said _____ (*name of the assured*) having been solemnly sworn, do depose and say,—

1. That on the _____ day of _____ now last past, between the hours of _____ and _____ a fire broke out in said building, whereby the same was greatly damaged (*or destroyed*), and the said fire was, according to my best knowledge and belief, caused by (*here set forth the causes so far as they are known, or supposed on reasonable grounds*), and I aver that the said fire was not caused by me, or by my design and occurrence, or with any previous knowledge on my part, or in any manner attributable to me or to my agency direct or indirect.

2. That I was interested in the said property in the following manner: that is to say (*here say whether the insured owned the property himself, or was a tenant of it, or a landlord, or mortgagor or mortgagee, or trustee, or how otherwise he was interested*).

3. That there was no other insurance against fire of the said property (*or, if there was any other, state what it was*).

4. That the occupants of the building at the time of the fire were, so far as is known to me, the following persons (*set forth the names of the occupants, the parts of the building occupied by each one, and the purpose for which it was occupied.*)

5. That the actual value of the building in dollars at the time of the fire, was, according to my best belief and judgment, _____ dollars. (*If the property was personal, as goods, furniture, or the like, say, As may appear by the schedule annexed.*)

6. That the whole of said value was lost by the fire; and being more than the sum insured thereon, I now claim of said insurance company said sum of _____ dollars. (*Or if the building was injured, and not destroyed, then say that so much of the value—stating the amount—of said building was lost by the fire, inasmuch as the building, if repaired, cannot be restored to as good condition as before, for a less amount than that sum.*)

Witness my hand at _____ this _____ day of _____ in the year _____

(Signature.)

(Certificate to be appended to the foregoing.)

STATE OF _____,
COUNTY OF _____, } ss.

I, _____ (*name of magistrate*) a justice of the peace in and for said county (*or what else may be his office*), dwelling near to the property above mentioned, in the town (*or city*) of _____ have investigated the circumstances attending the said fire, and am personally acquainted with the said _____ (*name of insured*), whose character is good; and I believe that the above statement to which the said _____ (*name of insured*) has made oath in my presence is true; that the loss cannot be imputed to fraud or misconduct on his part, and that he has suffered by the fire a loss of _____ dollars. I am not in any way interested in the said property, or in the said policy, or any claim under the same.

In Witness of all of which I have hereunto set my hand and my seal (*of office, if he has an official seal*), at _____ this _____ day of _____ in the year _____

(Signature of Magistrate.) (Seal.)

(111.)

Assignment of a Policy to be Indorsed Thereon.

I, _____ (*name of insured*) insured by the within policy, in consideration of a dollar paid to me by _____ (*name of the assignee*) and for other good considerations, do hereby assign and transfer to the said _____ (*name of the assignee*) this policy, together with all the right, title, interest, and claim which I now have or hereafter may have, in, to, or under the same.

Witness my hand this _____ day of _____ in the year _____

(Signature.)

(Witness.)

It is always best to write this assignment on the policy itself, but it may sometimes happen that this is not convenient or possible; the insured who wishes to make the assignment not having the policy within his possession or easy reach. Then the assured may use the following Form:

(112.)

Whereas, the _____ Insurance Company, by the policy, numbered _____ and dated on _____ day of _____ in the year _____ caused me to be insured against loss or damage by fire on a certain building, being (*designate the building by location or otherwise*) in the sum of _____ dollars; now, I, the said (*name of the insured*), in consideration of one dollar paid to me by (*name of the assignee*) and for other good considerations, have transferred and assigned, and do by these presents transfer and assign unto the said (*name of the assignee*) the said policy of insurance, and all the right, title, interest, or claim, which I now have or ever may have in, to, or under the same, and in and to any sum of money which now is or shall ever be payable thereon.

Witness my hand this _____ day of _____ in the year _____

(*Signature.*)

(*Witness.*)

If the policy be on goods, or if it be not a fire policy, but a marine policy, or a life policy, then the assignment must be made to conform to the facts.

It is *always* best to get the assent of the insurance company to the transfer *before it is made*. And always the assignment, when made, should be exhibited without loss of time, to them or to their agent authorized to give their assent, and this assent to the assignment be obtained and written upon the policy, or, if that cannot conveniently be, on the assignment, and in the books of the insurance company.

CHAPTER XXIX.

LIFE, ACCIDENT, AND OTHER INSURANCE.

SECTION I.

THE PURPOSE AND METHOD OF LIFE INSURANCE.

If A insures B a certain sum payable at B's death to B's representatives, we have only the insurer and insured, as in other cases of insurance. But if A insures B a sum payable to B or his representatives on the death of C, although C is often said to be insured, this is not quite accurate; more properly, B is the *insured* party and C is the *life-insured*.

Life insurance is usually effected in this country in a way quite similar to that of fire insurance by our mutual companies. That is, an application must be first made by the insured; and to this application queries are annexed by the insurers, which inquire, with great minuteness and detail, into everything which can affect the probability of life. These must be answered fully; and if the insured be other than the life insured, there are usually questions for each of them. There are also, in some cases, questions which should be answered by the physician of the life insured, and others by his friends or relatives; or other means are provided to have the evidence of the physician and friends.

These questions are not precisely the same in the forms given out by any two companies; and we do not speak of them in detail here. The rules as to the obligation of answering them, and as to the sufficiency of the answers, must be the same in life-insurance that we have already stated in the chapters on Fire and Marine Insurance; or rather must rest upon the same principles. And the same rules and principles of construction therein set forth would doubtless be applied to the question whether a contract had been made, or at what time it went into effect.

SECTION II.

THE PREMIUM.

IF the insurance be for one year only, or less, the premium is usually paid in money, or by a note, at once. If for more than a year, it is usually payable annually. But it is common to provide or agree that the annual payment may be made quarterly, with interest from the day when the whole is due. Notes are usually given; but if not, the whole amount would be considered due. If A, whose premium of \$100 is payable for 1919 on the 1st day of January, then pays \$25, and is to pay the rest quarterly, but dies on the 1st of February, the \$75 due, with interest from the 1st of January, would be deducted from the sum insured. If the policy provides that the risk shall "terminate in case the premium charged shall not be paid in advance on or before the day at noon on which the same shall become due and payable," and the day of payment falls on Sunday, the premium is not payable until Monday, although the assured dies on Sunday afternoon.

Provision is sometimes made that a part of the premium shall be paid in money, and a part in notes, which are not called in unless needed to pay losses. The greater the accommodation thus allowed, the more convenient it is, obviously, to the insured, but the less certain will he be of the ultimate payment of the policy; because, in the same degree, the fund for the payment consists only of such notes, and not of payments actually made and invested. There is a great diversity among the life-insurance companies in this respect. But even the strictest, or those which require that all the premiums shall be paid in money, usually provide also that an amount may remain overdue, without prejudice, which does not exceed a certain proportion—say one-half or one-third—of the money actually paid in on the policy. This is considered, under all ordinary circumstances, safe for the company, because every policy is worth as much as this to the company. Or, in other words, it would always be profitable for the company to obtain a discharge of its obligation on a policy, by repaying the insured so small a proportion of what has been received from him.

Taking a note would certainly be a waiver of immediate payment, if not itself a payment.

The premiums, after the first, must be paid on the days on which they fall due. If no hour be mentioned, then it is believed that the insured would have the whole day, even to midnight. It is possible, however, that he might be restricted to the usual hours of business, and perhaps even to those in which the office of the insurers is open for business.

Practically, the utmost care is requisite on the part of the assured, to pay his premium as soon as it is due; and it is a wise precaution to pay it a little before. This is the only proper and safe course. But we believe it to be not unusual for the insurers to accept the premium if offered them a few days after, and continue the policy as if it were paid in season, provided no change in the risk has occurred in the meantime.

And the rules of the company, and in all States the statutes, provide that, if a policy be defeated by a non-payment of the premium, the insured does not lose all that he has paid; but a certain proportion of the value which the policy then had shall be paid to him.

The time of the death is sometimes very important. If the policy be for a definite period, it must be shown that the death occurs within it. If there were an insurance on a man's life for a year, and some short time before the expiration of the term he received a mortal wound, of which he died one day after the year, the insurer would not be liable. And the terms of the policy sometimes make it necessary to determine which of two persons lived longest; as if a sum is insured on the joint lives of two persons, to be paid to the representatives of the survivor.

SECTION III.

THE RESTRICTIONS AND EXCEPTIONS IN LIFE POLICIES.

OUR policies usually contain certain restrictions or limitations as to place; the life-insured (he whose life is insured for his own or another's benefit) not being permitted to go beyond certain limits, or certain places. But there is nothing to prevent a bargain permitting the life-insured to pass beyond these bounds, either in consideration of new and further payments, or of the common premium, and this is frequently done.

So certain trades or occupations, as of persons engaged in making explosives, etc., are considered extra-hazardous, and as therefore prohibited, or requiring an extra premium.

The exception, however, which has created most discussion, is that which makes death by suicide an avoidance of the policy. The clause respecting dueling is plain enough; and no one can die in a duel without his own fault. But it is otherwise with regard to self-inflicted death. This may be voluntary and wrongful, or the result of insanity and disease, for which the suffering party should not be held responsible.

The general principles of the law of contracts, and of the law of insurance particularly, would lead to the conclusion that "death by his own hands," but without the concurrence of a responsible will or mind, would not discharge the insurers, without a positive provision to that effect. We should put such a death on the same footing with one resulting from a mere accident, brought about by the agency, but without the intent, of the life-insured; as if poison were sent to him by mistake for medicine, and he swallowed it under the same mistake. And so it has been decided by the Supreme Court of the United States. Policies now, however, frequently add to the suicide clause the words, "voluntary or involuntary, and whether sane or insane." Where this clause is used all question as to the mental condition of the insured is plainly excluded. As to the words "voluntary or involuntary," there is good ground for holding that they do not apply to a case where death is clearly accidental, as from taking poison by mistake, or where a man in felling a tree cuts his foot and bleeds to death. In Colorado and Missouri it is provided by statute that after the expiration of one year from the date of the policy, suicide shall not be a defense even under the conditions specified in this clause.

Much question has been made, *when* a man may be believed to be dead, simply because nothing is known about him, or has been known for a long period. But there is not and cannot be any other presumption of law on the subject than that, after a certain period of absence and silence, there is a presumption of death; and seven years has been mentioned in England and in this country as this period, and even sanctioned by legislation in New York and some other States. But all questions of this kind we regard as pure questions of fact. Whichever party rests his case upon the

death or the life of a certain person, at a certain time, must satisfy the jury upon this point by such evidence as may be admissible and sufficient.

SECTION IV.

THE INTEREST OF THE INSURED.

EVERY one insured in any way must have an interest in the subject-matter of the insurance. A person may effect insurance on his own life in the name of a creditor, for a sum beyond the amount of the debt, the balance to enure to his family, and the policy will be valid for the whole amount insured. Any one may insure his own life; but if the insured and the life-insured are not the same,—that is, if the insured be insured on some other life than his own,—interest must be shown.

A father has an insurable interest in the life of his minor son. And the general rule is, that any substantial pecuniary interest is sufficient, although not strictly legal nor definite. This has been held in the case of a sister dependent on a brother for support; and the rule would be held to apply not only to all relations, but where there was no relationship, if there were a positive and real dependence. That is, any one may insure a sum on the life of any other person on whom he or she really depends for support or for comfort. And generally, it is said to be enough, if, according to the ordinary course of events, pecuniary loss or disadvantage will naturally and probably result from the death of the one whose life is insured.

So an existing debt gives the creditor an insurable interest in the life of a debtor. But if the debt be not founded on a legal consideration it does not sustain the policy. And if the debt be paid before the death of the debtor, the insurers are discharged.

SECTION V.

THE ASSIGNMENT OF A LIFE POLICY.

LIFE policies are assignable at law, and are very frequently assigned in practice. And the assignee of a policy is entitled on the death of the party insured, to recover the full sum insured without reference to the amount of the consideration paid by him for the assignment. This adds an important element to the value of

a life policy. Indeed, policies are often taken out with the express intention of assignment; this being done for the purpose of enabling the insured to give this additional security to his creditor. If the rules of the company or the terms of the policy referred to an assignment of it, they are binding on the parties. On the one hand, an assignment would operate as a discharge of the insurers, provided a rule or expressed provision gave this effect to the assignment. And, on the other, if the agreement were that the policy should continue in favor of the assignee, even after an act which discharged it as to the insured himself,—as, for example, his suicide,—the insurers would be bound by it.

It is an important question what constitutes an assignment. The general answer must be, any act distinctly importing an assignment. And, therefore, a delivery and deposit of the policy, for the purpose of assignment, will operate as such, without a formal written assignment. So will any transaction which gives to a creditor of the insured a right to payment out of the insurance.

It seems, however, that delivery is necessary. And where an assignment was indorsed on the policy, and notice given to the insurer, but the policy remained in the possession of the insured, it was held that there was no assignment. Where, however, the assignment is by a separate deed, which is duly executed and delivered, this is an assignment of the policy, without actual delivery of the policy itself.

SECTION VI.

WARRANTY, REPRESENTATION, AND CONCEALMENT.

THE general principles on this subject are the same which we have already stated in reference to other modes of insurance. In life policies, however, the questions which must be answered are so minute, and cover so much ground, that difficulty seldom arises except in relation to the answers. One advisable precaution is for the answerer to discriminate carefully between what he knows and what he believes. If he says simply “yes” or “no,” or gives an equivalent answer, this is in most cases a strict warranty, and avoids the policy if there be any material mistake in the reply. But where the answerer adds the words “to the best of my knowl-

edge and belief," he *warrants* only the fact of his belief, or, in other words, nothing but his own entire honesty.

The cases which turn upon the answers to the questions are very numerous; but they necessarily rest upon the especial facts of each case, and hardly permit that general rules should be drawn from them. Some, however, may be stated.

The first is, that perfect good faith should be observed. The want of it taints a policy at once, and the presence of it goes far to protect one. Thus, where the life-insured was beginning to be insane, but was wholly unconscious of it, the policy was not vitiated by the concealment, although two doctors in attendance upon him knew how the case stood.

Most of the policies of the present day provide that the policy is made on the faith of the statements in the application for insurance, and with the stipulation that, if they shall be found in any respect untrue, the policies shall be avoided. Then the stipulations are considered as warranties, and if untrue, even in a point immaterial to the risk, avoid the policies.

There is a warranty, or statement, usually making a part of nearly all life-policies; it is that the life insured is in good health. But this does not mean perfect health, or freedom from all symptoms or seeds of disease. It means reasonably good health; and loose as this definition, or rule, may be, it would be difficult to give it any other. And if a jury on the whole are satisfied that the constitution of one warranted to be "in good health" is radically impaired, and the life made unusually precarious, there is a breach of the warranty, although no specific disease is shown which must have that effect. On the other hand, this warranty is not broken by the presence of a disease, if that be one which does not usually tend to shorten life (in one English case dyspepsia was said to be such a disease), unless it were organic, or had increased to that extreme degree as to be of itself dangerous.

Consumption is the disease which is most feared in this country, as well as in England. And the questions which relate to the symptoms of it, as spitting of blood, cough, and the like, are exceedingly minute. But here also there must be a reasonable construction of the answers. Thus, if spitting of blood be positively denied, there may be no falsification in fact, though literally speaking the life-insured may have spit blood many times, as when a tooth was drawn, or from some accident. If there be

an action on the policy, and the insurers rest their defense on any falsification of this kind, the question usually put to the jury is, Was the party affected by any of these or similar symptoms, in such wise that they indicated a disorder tending to shorten life? And any symptom of this kind however slight,—as a drop or two of blood having ever flowed from inflamed or congested lungs,—should be stated. Statements materially untrue on these points avoid the policy, although the insured, at the time of his application, did not believe that he had any pulmonary disease, and the statement made by him was not intentionally false, but, according to his belief, true.

The insurers always ask who is the physician of the life-insured, that they may make inquiries of him if they see fit. And his name must be stated fully and accurately. It is not enough to give the name of the usual attendant; but every physician really consulted should be named, and every one consulted as a physician, although he is an irregular practitioner or quack.

If the warranty be that the life-insured is a person of sober and temperate habits, it has been held, in an action on such a policy, that the jury are not to inquire whether his habits of drinking are such as might injure his health; for if he has any "habits of drinking," this would discharge the insurers, because they have a perfect right to say that they will insure only those who are temperate. But it may be answered, that although the insurers have this right, and there may be good reasons why this should be the general practice, yet unless they use the word "abstinence," or something equivalent, they have no right to say that any one is not "temperate" who does not drink enough to affect his health; for as, generally, all intemperance must affect health injuriously, if there be no such injury, the presumption would be that there was no intemperance; and there is clearly a broad distinction between temperance and total abstinence.

An answer, "not subject to fits," is not necessarily falsified by the fact that the life-insured has had one or more fits. But if the question had been, "Have you ever had fits?" then it is said that any fit of any kind, and however long before, must be stated. But if a man had a fit when a young child, and forgotten to mention it, or considered it wholly unimportant, and it had nothing to do with his state of health, it would hardly be held a falsification which would avoid the policy.

As there is always a general question as to any facts affecting health not particularly inquired of, a concealment of such a fact goes to a jury, who are to judge whether the fact was material, and whether the concealment was honest. As when a life-insured was a prisoner for debt, and so without the benefit of air and recreation, and this was not told; and where a woman whose life was insured had become the mother of a child under disgraceful circumstances some years before, and this fact was concealed, the plaintiff was non-suited.

If the policy, and the papers annexed or connected, put no limits on the location of the life-insured, he may go where he will. But if, when applying for insurance, he intends going to a place of peculiar danger, and this intention is wholly withheld, it would be a fraudulent concealment.

If facts be erroneously but honestly misrepresented, and the insurers, when making the policy, knew the truth, the error does not affect the policy. Nor does the non-statement of a fact which diminishes the risk.

In Massachusetts it is provided by statute that no warranty made in the negotiation of a contract or policy of insurance shall be deemed material or defeat or avoid the policy unless made with intent to deceive, or unless the matter made a warranty increases the risk of loss. Similar statutes are in force in Minnesota, Missouri, Oklahoma and some other States.

The policies of some companies now provide that all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties, and that no such statement shall avoid or be used in defense to a claim under the policy, unless contained in the written application a copy of which is annexed to the policy.

Another provision which is now common is that the policy shall be incontestable after one year from its date, except for non-payment of premium, subject, however, in case of misstatement of age, to adjustment of the insurance proportionate to the premium at the true age.

If upon a proposal for a life insurance, and an agreement thereon, a policy be drawn up by the insurers and presented to the insured and accepted by him, which differs from the terms of the agreement, and varies the rights of the parties concerned, equity will interfere and deal with the case on the footing of this agree-

ment, and not of the policy. But it may be shown by evidence and circumstances, that it was intended by the insurers to vary the agreement, and propose a different policy to the insured, and that this was understood by the insured, and the policy so accepted.

SECTION VII.

ENDOWMENT POLICIES.

IN the forms of life insurance heretofore considered, the amount of the policy is made payable only on the death of the life insured. If he lives to old age there may come a time when he is earning nothing, and when his personal needs, rather than those of his beneficiaries—usually his wife and children—require to be provided for. Endowment policies, so called, in which an endowment clause is inserted in a life policy, are intended to provide for this contingency. Their provisions vary greatly. Almost every company has some special forms or combinations, professing to offer peculiar advantages to the insured. The one characteristic feature of all endowment policies, however, is the stipulation that if at the expiration of a specified number of years, the life-insured be living, the amount of the policy will be paid to him or to his assignee, but that, if he dies before that time, it will be paid to the beneficiary named, as in the case of a simple life policy. In its other general features an endowment policy is similar to an ordinary life policy. The premium, however, is necessarily adjusted to the special risk involved, and the whole amount of premiums is payable before the expiration of the endowment period, if the insured be still living. Other modifications of the life policy, such as the payment to the beneficiary of a fixed annuity for life instead of a lump sum at the death of the insured, are also common.

SECTION VIII.

ACCIDENT INSURANCE.

THIS is a branch of life insurance in which only death or injury from accidental causes is insured against, and is governed by the same general principles.

What has been said of warranties and representations in relation to policies of life insurance applies equally to accident insur-

ance. Any false representation material to the risk made by the applicant in his application, such as those relating to his age, physical condition or occupation, will avoid the policy. A statement, however, that he has never been ill or received any physical injury is not to be literally construed, and means only that he has had no serious illness or injury which has affected his general health, or left any perceptible traces behind which would make him less eligible for insurance.

Accident policies vary greatly in their details, but in certain general respects are substantially alike. They usually insure only against injuries caused by "external, violent and accidental means." The requirement that the injury must be "accidental" is a universal one, and the word "accident" in the policy is to be understood in its popular sense, meaning, says the Supreme Court of the United States, an event "happening by chance; unexpectedly taking place; not according to the usual course of things; or not as expected. If a result is such as follows from ordinary means, voluntarily employed, in a not unusual or unexpected way, it cannot be called a result effected by accidental means. But if in the act which precedes the injury something unforeseen, unexpected, unusual occurs, which produces the injury, then the injury has resulted through accidental means."

Examples of accidental injuries are those caused by a fall, by blows, by unintentionally inhaling gas, by the effects of chloroform administered in preparation for an operation, by the bite of a dog, the sting of an insect, the discharge of a gun, choking while eating, drowning, or a sudden wrench or strain of the body.

On the other hand, injuries resulting from ordinary voluntary exertions, as for example, hastily jumping from a railroad car and running a considerable distance, reaching out to close a window, carrying heavy luggage, and the effects of riding a bicycle, bringing on appendicitis, have been held not to be accidental, within the meaning of the policy.

Disease resulting from an accidental injury is within the protection of the policy, but not when it is otherwise occasioned. Intentional injuries inflicted by third persons are held to be accidental.

The words "external" and "violent," in the expression above quoted, refer to the means which cause the injury, and not to the injury itself, and if the cause of the injury can be shown to be

due to accidental or unnatural means, this imports that the injury is due to external and violent means. Any injury, it is said, which is caused by means coming from outside the body of the insured may properly be considered in this connection as external and violent. Thus, for example, a sudden strain caused by bowling or lifting, death by drowning, or freezing, or by accidental poisoning, dislocation of the knee by sudden stooping to pick up a marble, blood poisoning from the bite of an insect have all been held to be due to external and violent means and in such cases the nature and character of the injury may of themselves be sufficient to establish that the means by which it was caused was external and violent.

It is also common to provide that the policy shall not cover any injury, fatal or otherwise, of which there is no external and visible sign or mark on the body, but any physical signs of injury, such as discoloration of the skin appearing several hours after the accident, satisfy this requirement, and where death results, the condition of the internal organs may furnish visible proof of the injury. Where the injury is internal any physical symptoms, such as bleeding from the nose, pallor, emaciation or unnatural discharges, are sufficient. It has been held also, that if the signs of injury are apparent to the touch, though not perceptible to the eye, they are "visible" within the meaning of the policy.

In any action on the policy the burden of proof is always on the insured to show that the alleged accident was in fact the cause of the death or injury.

For purposes of insurance, the different professions, trades and employments are classified, and the premiums and other terms of insurance vary as between the different classes in proportion to the degree of risk supposed to be incident to the respective employments. And under such a classification the policy usually covers the risks incident to the occupation in which the insured is engaged, and which is set forth in the application or in the policy itself. Where one is insured as a member of a particular class, however, he is not precluded from doing such acts as are incidentally done by persons of all employments, or acts of exercise or recreation, such as hunting or fishing, nor, unless there is some express provision in the policy to the contrary, does the classification affect temporary employments during leisure hours,

acts done outside of one's usual or ordinary business, or even casual employment in a different business.

Accident policies always exempt from their operation certain specified risks. These vary with different companies but some of the most common are: injuries intentionally inflicted by others, or by the insured himself; voluntary exposure to unnecessary danger; results of bodily infirmity or disease; hernias; lifting or over-exertion, but this does not include such acts as are incident to a man's ordinary occupation; medical or surgical treatment, unless rendered necessary by an injury insured against; suicide; entering or leaving a moving conveyance; injuries suffered while insured is engaged in violation of law, or in fighting or provoking assault, or while intoxicated, or walking on railroad track, or riding on the platform of a car, or in a conveyance not intended for passengers.

To constitute voluntary exposure to danger, the danger must be one that a reasonably prudent man should foresee and recognize, such as that of jumping from a rapidly moving train. But where the danger is not an obvious one, even though the act be voluntary, the exception does not apply. Nor does it include voluntary exposure to necessary danger, as where one is injured while endeavoring to save the life of another, or in the performance of a necessary duty. And where the occupation of the insured exposes him to unusual hazards these are not regarded as a "voluntary exposure to danger," as for example where a painter or mason is working on a suspended scaffold or rope sling, or a railroad engineer is obliged to attend to the operation of a rapidly moving engine.

Under a policy insuring only against accidents occurring while the insured is traveling as a passenger on a public conveyance, it is held that he is protected while alighting from one conveyance to pursue his journey in another. And where in the course of her journey a woman had to change from a steamboat to a railroad train, the railroad station being at a considerable distance from the steamboat landing, she continued to be protected while walking from one to the other.

Questions sometimes arise under the clause excepting death or injuries occasioned by bodily infirmity or disease. Here the law is that if the injury is due solely to the accident, without being affected by any diseased condition of the body, the insurer is lia-

ble; but if the accident merely aggravates or hastens the effect of disease, or if the injury is due to the joint effects of accident and disease, the insured cannot recover. Where, however the insured at the time of the accident is free from any actual disease, although as the result of some previous disease his system is less able to resist the effects of the accident than it otherwise would be, the exception does not apply. And where the accident is the proximate cause of the injury and the disease only the occasion, as where a man in a fit fell into a stream and was drowned, it was held that the exception did not apply. Nor does it apply to a disease, as blood poisoning, directly occasioned by the accident.

A question frequently arises as to whether the disability resulting from an injury is total or only partial. This often depends upon the exact language of the policy, but, generally speaking, a man is totally disabled when he can no longer perform any substantial part of the duties of his regular employment or of any employment for which he is fitted. The fact that he may perform single or occasional acts does not make the disability partial.

The policy always provides that notice of any accident for which compensation is claimed shall be given to the insurer. If the policy fixes a time within which such notice must be given the notice must be given within that time. It has been held in some cases that the time does not begin to run until the results of the accident are ascertained, when they are not immediately apparent, but the Supreme Judicial Court of Massachusetts has held that, even in such a case, the time begins to run from the date of the accident. Where, however, the policy only provides for "immediate" notice it is held that the notice need not be instantaneous, but only that it shall be given within such time as is reasonable in view of all the circumstances. No particular form of notice is essential. It may be by letter. It should state the nature and cause of the accident, as well as the time and place, giving the best information available at the time. When the policy requires information on specific points or special proofs, as for instance a physician's certificate, these should be furnished, but any defect in the proofs will not invalidate the notice itself. If further proofs are required the insurer should notify the insured. Where the policy provides that notice and proofs of loss must be furnished at the home office, this provision

is binding on the insured. In the absence of such a requirement notice to a general agent is sufficient.

SECTION IX.

HEALTH INSURANCE.

POLICIES of health insurance provide indemnity, to the extent specified therein, for disability caused solely by bodily disease. In addition to such indemnity, hospital charges and the expense of surgical operations incurred within a limited time by reason of disease are also provided for. Injuries occasioned by accidental violence are usually expressly excepted, as well as sickness or disability sustained in the tropics or in Alaska or the British Possessions north of the sixtieth degree of latitude, or while the insured is engaged in military or naval service.

The application, which is made a part of the contract of insurance, contains a statement of facts made by the insured, including among other things, his age, the nature of his business and his occupation and duties, his present condition of health and his previous history with reference to certain specified diseases, and any medical or surgical treatment to which he has been subjected. The falsity of any of these statements bars the right to recovery, if made with intent to deceive, or materially affects either the acceptance of the risk or the hazard assumed by the company.

SECTION X.

GROUP INSURANCE.

EMPLOYERS now frequently procure insurance for their employees, and a form of policy has been devised by which the whole body of employees eligible for insurance, are insured in a single group, the policy being issued to the employer and the premium paid by him. Such a policy may be a simple life policy, under which, on the death of any employee while in the employer's service a stipulated sum is paid to the beneficiary designated by him; or it may also include a provision for the payment to the employee himself, in case of permanent total disability preventing him for life from engaging in any occupation or employment for wage or profit. Other forms of group policy

insure against accidents and disability caused by disease, and a specific weekly indemnity is agreed to be paid as in the ordinary forms of accident and health policies.

SECTION XI.

EMPLOYERS' LIABILITY INSURANCE.

INSURANCE of employers against claims of their employees for accidental injuries suffered in the course of their employment, is now to a very considerable extent made under the provisions of the Workmen's Compensation Laws, which form the subject of a subsequent chapter. We may remark here, however, that in many States where under these laws the employer is permitted to insure in a private stock or mutual insurance company, it is required that the policies be made in such form that the injured employee may have direct recourse to the insurance company for compensation, as though he were personally a party to the contract.

But even in the States where Workmen's Compensation Laws have been enacted, classes of workmen—as for instance domestic servants and farm laborers—are often expressly excepted from the operation of these laws, and in some States the law applies only to special kinds of business or to establishments in which more than a specified number of workmen are employed, so that a wide field is still left open for the insurance of employers under circumstances to which these laws do not apply.

The forms and terms of employers' liability policies vary with the nature of the employment. Special forms, for instance, are provided for manufacturers, for contractors, and for agricultural and domestic service. In general, the company agrees to indemnify the employer against loss by reason of the liability imposed upon him by law for damages on account of death or bodily injuries accidentally sustained by his employees arising out of and in the course of their employment; to defend any suits brought against him on account of such injuries, and to pay the costs and expenses incurred therein. The assured is required to give the company immediate notice of any accident and of any suit brought for recovery of damages, and, at the request of the company to aid in effecting settlements, or furnishing evidence in defense of any suit. The matter of settlement or de-

fense is, however, entirely in the hands of the company, and the employer can make no settlement without its express consent. In some policies it is even provided that no action shall be brought against the company by the assured, except for loss actually sustained and *paid by him in money* in satisfaction of a judgment, and the time within suits may be brought is always limited.

The declarations made by the applicant for insurance, and which are expressly adopted and form a part of the policy, specify, among other things, the location of the factory, shop or yard where the employer's business is carried on, and the nature of the business, and in the case of a house or farm its location and description; also the number of employees, their duties, and the amounts of salaries and wages paid them. It is upon the facts as set forth in these declarations that the company estimates the extent of the risk assumed, the premium to be paid, and the limit of the indemnity.

As to what is meant by an injury "arising out of and in the course of the employment," see chapter xlvii on Workmen's Compensation Laws where this subject is fully discussed.

In the form of policy for manufacturers it is usually further provided, that the company shall be responsible only for injuries sustained within the premises described in the declarations, or on the premises and ways immediately adjoining, except that drivers, salesmen and messengers whose duties are performed off from the premises are covered while in the performance of their duties wherever they may be.

SECTION XII.

PUBLIC LIABILITY INSURANCE.

Few people realize the extent of the liability to which every owner of property or employer is subject on account of injuries to the persons or property of others due to his own negligence or that of his servants or employees, especially when it is remembered that he is responsible for the acts of his servants or employees while in the conduct of his business. My teamster or chauffeur may run over some one or collide with another vehicle. My servant may leave the coal hole in the side walk open, and some one may fall in and be injured. I may negligently allow

snow and ice to accumulate on the roof of my house and fall and injure a passerby.

To provide for these and other similar contingencies a great variety of policies are issued by insurance companies, in most of which the assured is indemnified against loss imposed upon him by law on account of bodily injuries sustained by any person other than his employees, upon the premises described in the policy. Different forms are issued for factories, stores, dwellings, farms, etc. Injuries on elevators are usually excepted, and are covered by special forms of policy. Injuries to persons or property by vehicles, automobiles or air craft, owned or operated by the person insured are also the subjects of special forms of insurance.

In the case of automobiles the policy may cover not only injury to the persons and property of others but damage to the automobile itself. Automobile policies always except injuries caused during racing, or comparative speed tests, or when the machine is operated by a person under the age required by law, or an age specified, usually sixteen or seventeen years. Air craft policies also provide that they shall not apply when the air craft is used for any purpose contrary to law, or in any race or comparative speed test, public exhibition flight, or "trick" or "stunt" flying, or when discharging any ammunition or projectiles, and that they shall apply only when the aircraft is in charge of a qualified pilot, who must be of at least a specified age, usually nineteen years.

Different kinds of insurance are sometimes contained in the same policies, with special provisions applicable to each kind. For instance a house or farm policy may include liability under Workmen's Compensation Laws, employer's liability and public liability.

SECTION XIII.

FIDELITY INSURANCE.

Of late years insurance of the fidelity and honesty of employees of large corporations and others has become an almost universal practice. The policy usually takes the form of a surety bond, but many of the general principles of insurance are applicable to it.

If any statements material to the risk, either in the original application or any renewal are untrue, the surety will be discharged. It has been held, however, that an official certificate made by a bank in view of the renewal of a cashier's bond, that his books and accounts had been examined and found correct, was not a warranty of their correctness, and that if the statements were made in good faith and based on a careful examination of the books and accounts, the bank could recover although the cashier was in fact then a defaulter. But if it appears that the examination was conducted carelessly, and that if properly made it would have shown the true state of affairs, the surety will be discharged.

As to precautions to be taken to prevent or detect future frauds, if the bond prescribes any specific measures they must be strictly complied with, but generally any statements on the subject in the application are considered only as representations of intention, and it is enough if they are followed substantially and in good faith. In one case where the bond required that the surety should be notified if the employee was found to be speculating or gambling, failure to notify was held to avoid the bond, although the employee had promised not to speculate again; but in such cases the insured is only bound to report facts, and not mere suspicions. It is a common provision that the surety shall not be responsible for acts committed during the term of the bond, but not discovered within six months after its expiration.

The surety is entitled to information of any important change in the duties of the employee increasing his responsibility, as when a mere clerk is appointed cashier. In case of defalcation notice must be given to the insurer as soon as practicable, otherwise he will be discharged.

SECTION XIV.

BURGLARY AND OTHER INSURANCE.

In the foregoing pages we have briefly considered the principal kinds of insurance. There are, however, many others, such as Steam Boiler Insurance, Plate Glass Insurance, Tornado Insurance, etc., and new forms are added from time to time as the exigencies of modern business or social life show the need for them. All, however, depend upon the same general principles,

and will be readily understood by anyone who has carefully studied what we have said of the kinds and forms of insurance already described.

There is, however, one other class of which it may be well to say a few words, namely, what is known as Burglary Insurance. Policies of this class are in many different forms, adapted to the peculiar risks of different kinds of business, as for instance, banks, stores and manufactories. In all of these the declarations of the assured, forming a part of the policy, contain specific information as to the means of protection employed by him, such as the kind and qualities of the safes used, burglar alarms, watchmen, etc. There are special forms also adapted to private residences. The policies differ also as to the character of the risks insured and the extent of the indemnity.

A distinction must be carefully borne in mind between policies which insure against loss or damage by burglary only, and those which insure also against larceny and theft. The former agree to indemnify the assured only for loss by burglary of the property of the assured on the premises described, by any persons making a felonious entry into the premises by actual force and violence; and it is usual to add, "of which force and violence there shall be visible marks made upon the premises by tools or explosives." Damage to the property and premises of the assured in the commission of the burglary is also included. Under such a policy, if the entry be made by means of false keys, or by climbing and entering a second story window left unfastened, no recovery can be had. In the broader forms of policy where loss by larceny and theft are also insured against, the element of force becomes immaterial.

In policies applicable to residences the special provision always inserted in regard to occupancy or vacancy of the premises should be carefully noted. All these policies, in addition to the usual proofs of loss, require that immediate notice shall be given to the company by telegraph, and that the police shall also be immediately notified.

Robbery, which may be briefly defined as the taking of property by force and violence, is also in certain cases a subject-matter of insurance, when committed in a bank or office, or upon the custodian of money or securities such as a bank messenger

or paymaster or collector elsewhere in the performance of his duties.

In closing this brief consideration of the subject of insurance we would urge upon every reader attention to two simple, but extremely important rules :

First.—To read carefully every word of a new policy before accepting it, thus making sure that it covers the risk intended to be covered, and that its terms and conditions are clearly understood. Before offering a form of policy to the public the insurance company always carefully considers the risks which it is willing to assume, and the conditions on which it is willing to assume them, and these are always specifically and distinctly set forth in the policy. The policy when accepted is a contract, every word and phrase of which is important as affecting the right both of insurer and insured, yet how frequently a policy is filed away without examination, and not until a loss takes place does the insured find that its terms are not what he had assumed them to be, or that he has neglected to conform to requirements which the policy distinctly imposed upon him.

Second.—To remember that the entire contract is embodied in the policy, and that statements made by an insurance agent previous to the issuing of the policy, are of no effect in controlling or modifying its terms. It is one of the express terms of every policy that none of its conditions or provisions shall be waived or altered, except by written endorsement attached to the policy and signed by certain designated officials.

CHAPTER XXX.

DEEDS CONVEYING LAND.

SECTION I.

WHAT IS ESSENTIAL TO SUCH DEEDS.

By the old law, no instrument was considered made until it was sealed; then it was thought to be *done*, and the word *deed*, which literally means only something done, was given to every

written instrument to which a seal was affixed; and that is the legal meaning now. But the common meaning of the word is an instrument for the sale of lands; and it is of this that we would now treat.

By the statutes and usage of this country generally, no lands can be transferred excepting by a deed, which is signed, sealed, acknowledged, delivered, and recorded. In some States seals are abolished.

We give annexed to this chapter an Abstract of the Laws of all the States relating to deeds and their requirements.

What the deed should be, that is, in what words it should be expressed, we can best show by the forms appended to this chapter, and do not propose to say more about it than this. It is not safe to depart from forms, and established phrases, which have passed before the courts so often that their exact meaning is certainly known. There are things which seem to be and perhaps are vain repetitions; and for the usual words it may be thought that others of the same or better meaning may be substituted. Such changes may be made *perhaps*, without detriment; but *perhaps*, also, with ruinous results; and it is not wise to run the risk.

It should be signed; and this means, properly, that the seller or grantor should write his name in the usual way, in the proper place, and with ink. If the grantor cannot write his name, he may merely make his mark. It has been said that writing with a lead pencil is enough, but it would not be safe to trust to it. The name of the grantee should be distinctly written in the proper place, in ink. Sometimes, in our large cities, an agent buys land for a principal who does not wish to be known, and the agent's name is inserted as grantee, *in pencil*, and the deed is so executed and acknowledged and delivered; and some time afterwards the agent rubs his name out, and writes the name of his principal, the actual buyer, instead. But this is a very unsafe and reprehensible practice, and the deed cannot be considered satisfactory.

The deed of a corporation must be signed in its name by its proper officers, or by some other duly authorized agent or attorney, and sealed with the seal of the corporation. The manner of doing this is shown in forms hereto appended. There should also be annexed to the deed a copy of the vote of the corporation, or of

its directors, authorizing the conveyance and specifying the officers or other agents by whom it is to be executed, duly certified by the clerk or secretary. Care should be taken, not only that the deed itself should purport to be the deed of the corporation, but that it is executed and acknowledged as its deed. In one case, in Massachusetts, where a deed was written throughout as the deed of a corporation, and their treasurer signed it thus: "In witness whereof, I, the said C C., in behalf of the said company, and as their treasurer, have hereunto set *my hand and seal*,"—it was held that this was the deed of the treasurer, and not the deed of the corporation, and did not transfer the lands. This is an extreme case, and the law might not always be applied with so much severity; but it is best not to incur any such risk.

The seal is properly a piece of paper wafered on, or sealing wax pressed on. In some of the New England States, and in New York, nothing else satisfies the legal requirement of a seal. In the Southern and Western States generally, a scroll, intended for a seal, usually made by writing the word "seal" within a square or diamond, is regarded in law as a seal. If there be but one seal on an instrument, and many parties, all of whom should seal it, this seal will be taken generally for the seal of each one; although, properly, each signer should put a seal against his own name. In such case the seal should be referred to as the "common seal," thus: "In witness whereof the said parties have hereunto set their hands and affixed their common seal," etc.

The rule that a person who is to be authorized to affix the seal of another should be authorized by an instrument under the seal of the principal, is so general, that, although it has important exceptions, it should always be observed.

The deed should be delivered. If a man makes a deed, and acknowledges it, and keeps it in his possession, and dies, the deed has no effect whatever; no more than if the grantor had put it in the fire. Even where it was recorded, and then taken back by the grantor and kept by him, with words going to show that the grantor did not wish the grantee to know of it, it was held not to have been delivered. But there are no especial words or form necessary for delivery. If the deed, in any way whatever, gets into the possession of the grantee, with the knowledge and consent of the grantor, it is a delivery.

The grantor may deliver it by his agent, and it may be delivered to the agent of the grantee, authorized by him to receive it. Moreover, the law permits a kind of conditional delivery. Thus, the grantor may deliver the deed to a third person, to be delivered by him to the grantee on a certain condition, or when a certain thing is done; and when that condition is performed, or the thing is done, the deed belongs to the grantee, and takes effect in the same way as if it had been delivered to him personally. In legal language, the deed is said to be delivered to the third person, as an *escrow*.

So the grantor may put the deed in the hands of the third person, with directions to give it to the grantee after the death of the grantor, provided the grantor does not reclaim it in the meantime. Then the grantor can reclaim it whenever he will, which he cannot do after he has delivered it to the grantee, but if he does not reclaim it during his life, at his death it becomes the property of the grantee, and the law now considers that it was delivered to him when first delivered to that third party. So that deed is good even against creditors, provided that the grantor was perfectly solvent when he put the deed in the hands of the third party, and acted altogether in good faith.

If a deed to a married woman be delivered either to her or to her husband, it is sufficient.

As there must be delivery to the grantee, or to some one for him, so there must be assent and acceptance on his part. The law will help any evidence tending to show such assent, by presuming in favor of the grantee's assent if the deed be wholly and only favorable to him. But not if there is money to be paid by him, or anything important to be done if he accept the deed.

It is usual and proper that the execution of the deed should be attested by witnesses. In many of our States, two witnesses are required by statute; in others, one is enough. In the greater number, witnesses are not absolutely required by statutes, nor by strict law of any kind; but even there it is usual and safer to have them.

The witness should see the party sign; but if the deed is signed near him, and is immediately brought to him by the grantor, who tells him that is his signature, and asks him to witness, this would be sufficient in law.

It is desirable that witnesses, when called on to testify, should remember the signature, sealing, etc.; but it is sufficient in law that they are certain of their handwriting, and can declare under oath that they should not have attested the execution and delivery if they had not seen it. If witnesses are dead, proof of their handwriting is sufficient; and if this cannot be offered, then proof of the handwriting of the grantor is enough. If witnesses attest the signing, sealing, and delivery, in the common form, proof of their handwriting, in case of their death or absence, is proof of the execution and delivery of the deed.

The witness should, properly, be of sufficient age and understanding, but may be a minor. He should have no interest in the deed. Hence a wife is not a proper witness of a deed to her husband. But the courts, and especially a court of equity, would seldom permit a deed to be avoided through the incompetence of a witness, if there were no suspicion of wrong.

Generally a deed is valid as between the parties, although not acknowledged; but, to entitle it to be recorded, it must be acknowledged. For this purpose the grantor must go before a person qualified by law to receive acknowledgments, and exhibit the deed to him, and acknowledge it as his free act and deed; and the person receiving the acknowledgment then certifies that he has received this acknowledgment, under the proper date. This acknowledgment must be made, or the deed cannot be recorded. And the deed is invalid, as notice, if the acknowledgment is defective, although it is actually recorded. In some of the States a deed not acknowledged but proved by the testimony of two subscribing witnesses may be admitted to record.

The statutes of the several States specify what officials may take acknowledgments of deeds of land in the State, but in general an acknowledgment in the State may be made before a judge of a court of record, a justice of the peace or a notary public; in another State, before a judge of a court of record, justice of the peace, notary public, or a commissioner appointed for the State in which the land lies; and in a foreign country before an ambassador, minister, secretary of legation, *chargé d'affaires*, consul or consular agent of the United States.

In many of the States there is also required, when the acknowledgment is taken in another State before a notary public or justice of the peace, a certificate of the county clerk, or clerk of courts,

for the county, that the notary or justice was duly appointed and that his signature to the certificate of acknowledgment is genuine. Another provision, now common, is that the notary shall give in his certificate the date when his commission will expire.

Formerly, all the grantors acknowledged the deed; and this continues to be usual in most places, and is the safest practice. But, in some places, as in Maine and Massachusetts, it is now sufficient in law, if either of the grantors acknowledge it.

In many States, if a wife, separately or joining with her husband, conveys away her land, a particular form and mode of acknowledgment is required, in order to ascertain that she does it of her own free will; and any such directions or requirements should be followed with great care. The Forms added to this chapter will show how this is done.

An attorney, A B, who executes a deed for another, C D, should acknowledge it as "the free act and deed of the said C D," and not as his own.

Forms of acknowledgment adapted to the laws of the different States will be found at the end of this chapter.

In all our States, we have the excellent system of registering (or recording, as it is more frequently called) all deeds of land in the public registers of the county in which the land lies. This was adopted for the purpose of giving certainty and notoriety to title, and it works admirably well. The investigation of title is usually easy to those accustomed to this mode; and every purchaser of land should ascertain that the deed will give him good title before he takes it. We cannot too strongly urge the importance of such an examination. Too often a purchaser finds when it is too late that his grantor's title was defective, or that the land is subject to mortgages, taxes, mechanics' liens or other incumbrances, which would have been revealed by a proper examination of the records.

In many of our States a system of registration called the "Torrens System" has recently been adopted. Under this system, on petition filed and proper notices given to adjoining owners and all other parties interested, the title to the land is examined under the direction of the Land Court or other tribunal, and if found to be good is certified by the Court and registered, and is then guaranteed by the State. For land so registered simple forms of transfer and registration are provided by statute.

The law generally requires that a deed of lands should be acknowledged and recorded, to have full effect; but judicial decisions have everywhere qualified the force of these words, and in some instances the language of the statutes varies. But the rules of law in reference to the recording are quite uniform in all the States, and are as follows:

In the first place, every acknowledged deed is considered as recorded as soon as it is in the hands of the recording officer; and therefore he generally minutes upon it the day, hour, and minute when it was received by him. This may be very important; for if A makes his deed and delivers it to B, who presents it for record at five minutes past noon, and C, a creditor of A, attaches the same estate at four minutes past noon of the same day, the grantee loses the land and the creditor gets it; but the grantee saves it if he presents it to the office three minutes and fifty seconds after noon.

In the next place, as the purpose of public registration is general notoriety, a deed is perfectly good without record against the grantor himself and his heirs, because the grantor himself could not but know of the deed, and, as all title passed out of him by it, his heirs could take none from him.

And finally, a deed not recorded is just as good as if it had been recorded, against any parties, or the heirs of any parties, who took the land from the grantor by a subsequent deed, even for a full price, if they had at the time notice or knowledge of the prior and unrecorded deed. Many wise persons have doubted the expediency of this last rule, because it tends to raise troublesome questions, and to make grantees careless about recording their deeds. But the rule itself is universally and firmly established, and in some statutes requiring record this exception is expressed.

A deed should be dated; but, if it have no date, it will take effect from delivery. Any erasures or alterations should be noticed and stated above the names of the witnesses, as having been made before the execution of the instrument. Any material alteration by a grantee, or by his procurement, makes the deed void in most cases, so far as he is concerned.

It is usual, and therefore proper, to name executors, administrators, etc., as in the forms appended; but, generally, the rights

and obligations of the deceased fall by law on their legal representatives.

SECTION II.

THE USUAL CLAUSES IN DEEDS.

It is customary to recite in all deeds the consideration on which they are made. This is usually the price paid for them. Sometimes it is this price in part, and other things in part. Sometimes there is no price paid, the land being either a gift, or conveyed for other considerations. In the great majority of deeds, the language used is, "in consideration of (so much money) paid me by the said (grantee), the receipt whereof I acknowledge." Or it is, "in consideration of one dollar paid me,—the receipt of which I acknowledge, and divers other good and valuable considerations;" or, "in consideration of one dollar to me paid, the receipt of which I acknowledge, and of the love and goodwill I bear to the said (grantee)." It is always customary although not necessary to put in "one dollar," or some other nominal sum, although no price is paid.

Although the price is inserted, and the receipt thereof be acknowledged, the seller is not bound by his receipt. It is a general rule, as has been stated, that all written receipts of money are open to evidence, as written contracts generally are not. Under this rule, the seller may sue for the whole or any part of the money of which he has acknowledged the receipt, if he can prove that the money he demands has not been paid to him. He cannot, however, say that the money has not been paid, and *therefore the deed is void*, and the land has not passed to the grantee. For only that part of the deed which is a receipt is open to denial or evidence.

Of the words of conveyance, which are usually "give, grant, bargain, sell, and convey," it needs only be said, that it is best to use them, *because* it is usual, but that other words, or these with some change, would be sufficient in law.

The description of the land should be minute and accurate, to an extreme degree. If possible, the direction and length of the boundary lines should be given as well as the area, and the names of adjoining owners and any reference to fixed monuments which will aid in determining exactly what land is conveyed. Vague or inaccurate descriptions are a prolific source of disputes and liti-

gation. It is, however, a well-established rule, that when a description is inaccurate "monuments control courses and distances"—monuments in this connection meaning any fixed physical standard such as a road, a well or a stream. For example, if the boundary line of a lot be described as running east one hundred feet to a stone post on A. Street, the line would be held to run to that post, although in fact the line to that point ran a hundred and twenty feet in a northeasterly direction.

If there are buildings or other structures on the land it is usual and proper to mention them in the description—at least in general terms, as in the common phrase, "a certain parcel of land with the buildings thereon." The title to all such buildings and structures, however, as are permanently "annexed to the freehold"—to use the legal phrase—will pass under a conveyance of the land, whether specially mentioned or not. If there are any "easements," as they are termed, that is rights which the owner of the land has in his neighbors' lands, such as rights of way, drainage, etc., they should also be mentioned, though they will usually pass under the term "appurtenances," without more specific description. The same is true of "fixtures," as to which see also chapter on "Leases." In this country, it is customary and well to refer to the previous deeds by which the grantor obtained his title. This is done by describing them by their parties, date, and book and page of registry. It may be well to remark, that a deed referred to in a deed becomes, for most purposes in law, a part of the deed referring.

Following the description of the land comes a clause, technically called the "Habendum," the function of which is to define the nature and extent of the interest to be conveyed to the grantee. In a warranty deed this clause is usually substantially in the following form: "To have and to hold the above granted premises, with all the privileges and appurtenances thereto belonging, to the said (*grantee*), his heirs and assigns, to his and their use and behoof forever."

By the law of England and of America, if land is conveyed by deed to "A B," the grantee takes it for his life only. Nor will he take it in full property (or, to use the technical law-term, in fee simple), that is, with full power of disposing of it during his life or at his death, with a right on the part of his heirs to it if he does not dispose of it, unless it is given to "A B and his

heirs." These last words, which are commonly called words of inheritance, must always be added; for although there are some qualifications to this rule, which might help those who take such a deed inadvertently, there are none to which it would be safe to trust. In some of the States, however, words of inheritance are no longer necessary, the statutes providing that, unless specially limited, a deed shall convey all the interest of the grantor.

The deed is terminated by this clause of execution: "In witness whereof, I, the said A B, have hereunto set my hand and seal," or "subscribed (or written) my name and affixed my seal," on this — day of — in the year —." And there should be no departure from this, although an exact adherence to this formula may not be necessary to the validity of the deed. This clause is often called the "In Testimonium" clause.

If the deed contains nothing but what has now been said, it will convey the land, or all the right, title, and interest in and to the land, possessed by the grantor. But it is only what is called a *quitclaim deed*. That is, it is *not a warranty deed*. These phrases, which are in common use, explain themselves. Originally, a quitclaim deed was intended, and indeed operated, only where the grantee already held possession of the land, or some title to it, and the grantor intended to renounce all his right or title in favor of the grantee. But it was soon used where a man intended to sell and convey land, but not to give any warranty. And now, because there is some question, in some of our States, as to the effect of the words "give, grant, sell, and convey," although there be no express warranty in the deed, it is best, and it is usual, when only a quitclaim is intended, without any warranty whatever, to substitute for the words of conveyance above mentioned the words "grant and quitclaim," or, as in the Massachusetts form of deed, "remise, release, and forever quitclaim." Then, if the grantee afterwards loses the land because the grantor had no title to it, the grantor is nevertheless under no responsibility, provided the transaction was an honest one on his part.

All purchasers, therefore, desire to have a warranty deed if they can get one. And a deed becomes a warranty deed, when clauses like those which follow are inserted just before the clause of execution:

“And I, the said A B (the grantor), for myself, my heirs, executors, and administrators, do covenant with the said C D (the grantee), his heirs and assigns, that I am lawfully seized in fee of the aforegranted premises; that they are free from all incumbrances; that I have good right to sell and convey the same to the said C D as aforesaid; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said C D, his heirs and assigns forever, against the lawful claims and demands of all persons.”

It will be noticed that this paragraph contains four different agreements or warranties,—covenants the law calls them. The cases are multitudinous, and the law excessively nice, as to their exact meaning and operation. None of this technical learning is it worth while to spread before the general reader. But the general purpose and effect of all of them together should be stated. It is, that if “the said C D,” that is, the grantee, or his heirs or assigns, are turned out of that estate (ousted or evicted, the law says), on the ground that the grantor had no title, or an incumbered title, and could not convey any good and clear title, he or they may fall back on the grantor or his heirs, and demand damages for the loss of the land.

It is a question how much damage a grantee thus ousted shall recover. In most of our States, it seems to be the money paid for the land, with interest (deducting rents and profits), and the legal costs and charges (not including counsel fees) for defending against the suit which has ousted him from the land, and no more. But in other States, as generally in New England, the party ousted recovers the actual value of the land, with his improvements, which he loses by the defect of the grantor’s title; although this may be much more than he paid for it. It is not, however, settled uniformly what the measure of damages is.

In forms of deeds there is usually a blank of a few lines left after the words “incumbrances”; and this is intended for the insertion of any mortgage, or other incumbrance, which may exist; thus, “excepting a mortgage to, etc., dated, etc., to secure the sum of, etc.” Or, “excepting a right in the owners of the adjoining land to have and maintain a drain running, etc.”

Sometimes quitclaim deeds are made with this warranty: “And I will, and my heirs, etc., shall, warrant and defend, etc., to the said C D, etc., against all claims and demands of myself,

or of any persons deriving title by, through or under me." Such a warranty will hold the grantor and his heirs liable for any incumbrance made or suffered by him, but not for any other. Deeds in this form, though often called "quitclaim" deeds, should properly be called deeds of "special warranty," and in many of the States are known by this latter name.

As the usual covenants of a warranty deed are made with the grantee, "his heirs and assigns," if such grantee conveys the land only by grant and quitclaim, without warranty, his grantee takes the benefit of all the previous warranties to which this last grantor was entitled. Thus, A sells with warranty to B; B quitclaims to C; C is ousted by D, who proves that he has a better title than A. C cannot sue B because he got no warranty from B; but he can sue A on A's warranty to B, which was transferred to C.

Sometimes estates are conveyed on condition; but this is a very catching thing, and nobody should ever take such a deed if he can help it. It is hardly safe to have the word *condition* in any deed but a mortgage. The reason is, that if an estate is conveyed on condition, and the condition is broken, the estate is lost. Thus if land is sold on a certain street with this clause: "And the land aforesaid is sold on condition that neither the grantee, nor any one deriving title from or through him, shall build within ten feet of the street." If any owner build six inches over the line, by mistake, or extend his building by an addition of a foot or so in any part, the whole land, house and all, *might* be lost and forfeited to the grantor. And the grantor can always secure the proper effect of such a condition by a clause like this: "Provided, however, and it is agreed, that if the said C D, etc., shall build, etc., the said A B, or his heirs or assigns, may enter upon the land hereby conveyed, and abate and remove any and all buildings or parts of buildings, which stand nearer said street than the limit of ten feet aforesaid;"—or some similar clause, as might be framed to suit the case. This would be just as good for the grantor and a great deal safer for the grantee.

By a rule of law which originated in this country, and is now universal here, if a married woman holds lands, the husband and the wife, joining in one deed, may convey them. In some of our States such a deed is regulated by statutes, which of course are to be followed. In many of them the wife now has peculiar

powers by statute, as stated in Chapter IV on Married Women, and in some she may convey without joining her husband, as though she were unmarried. It may be necessary that she should renounce or release certain rights, as of homestead, etc., under these statutes, if it is intended that the grantee should take a clear title; and in such case proper words should be inserted. She should always release her right of dower, unless it is intended that she should preserve it. In some States her signing the deed with her husband does not release anything, even if it could be proved that such was her intention, unless the deed contain words expressing her intention to release or convey such or such a right or interest. In most printed forms there is a blank left to be filled up for this purpose. As this differs in different States I shall refer to it again.

To release the right of homestead it is a universal requirement that husband and wife must join in the deed, and the statutes generally require that this release shall be specifically mentioned in the deed, and frequently in the acknowledgment, also. It is quite common to release dower and homestead in the same clause.

It may be well to remark that bargains are often made for the purchase and sale of real property. If the contract be oral only, it has no force in any court. If it be in writing, either party may, in a court of law, recover damages from the other if he refuses to perform his contract. Or, in a court of equity, he may compel the other to execute his contract. Not, however, if there was fraud in the contract, or oppression, or gross misrepresentation, or intentional and important concealment. But a mere inadequacy of price—all things being honest—will not prevent a court of equity from enforcing such an agreement. Such a contract, however, while good between the parties, would not be binding upon a subsequent purchaser without notice, unless recorded. For this purpose it should be acknowledged in the same manner as a deed. The same is true of a bond for a deed, by which the owner of land binds himself to convey it to the obligee on the performance of the terms and conditions set forth. Such bonds are frequently used to secure options for the future purchase of land. Forms of such contracts and bonds will be found in Chapters V and VII.

Deeds conveying land are of vast variety. They not only differ that they may suit the particular purposes of the parties

and the terms of their bargain, but those used in each section of the country differ somewhat in form from those used in another; and different conveyancers in the same State prefer one form to another. But these differences are generally, if not always, differences only of form, and are seldom essential to the meaning and effect of the deeds.

In New England, a deed of land is usually what is called in law a Deed Poll; by which is meant a deed *of* one party, and *from* him to another. In the other States generally, a deed of lands is more commonly in the form of an Indenture, which, as has been said before, is an instrument *between two or more parties*. The difference between them will be seen in the forms given. The one given for Massachusetts is a Deed Poll. But most of them are Indentures, as they are most frequently used; although a Deed Poll that is satisfactory in other respects will generally suffice to give good title to land anywhere.

A form of a Deed Poll may be converted into an Indenture by changing the beginning of it in the manner shown in the forms, and, whenever the word "grantor" comes, changing that into "the party of the first part," and "grantee" into "party of the second part." And a deed by Indenture is made a Deed Poll by changes of an opposite kind. How to make these changes will be seen by comparing the deeds of the two kinds as herein given.

Another difference between Deeds Poll, and deeds by Indenture, must be noticed.

If the grantor by a Deed Poll has a wife, and it is intended that she shall relinquish her dower, she is not mentioned as grantor; but in the "In Testimonium," so called, which is that part of the deed which begins with "In witness (or in testimony) whereof," her name is mentioned, and it is said that she signs the deed in token of her relinquishment or release of dower, or her release of dower is made in a separate clause as shown below. But where deeds by Indenture are used, there she is joined with her husband, and named as grantor; he and she being "parties of the first part." It is, however, *not* necessary that anything should be said in the deed about her release of dower or homestead unless the statute of the State so requires; but she signs and seals the deed, and, in the acknowledgment, express mention is made of her release of dower and homestead, and frequently

also that she was separately examined. Some of the forms are drawn in this way. Other forms are written as if the grantor was unmarried, or as if his wife, if he had one, did not intend to give up her dower. But all these forms can be readily altered, and adapted to the facts of the case, according as there is or is not a wife, or as, if there be a wife, it is intended that she should join in the conveyance and relinquish her dower, or that the husband should convey subject to the wife's dower. If this last be the intention, it is not necessary to say so, as the mere fact that she is not a party to the deed preserves for her the right of dower.

The form for release of dower above given is still used, but it is now more common to put the release of dower with the release of homestead in a separate clause just before the *In Testimonium* clause, as follows:

"And for the consideration aforesaid, I, ——— wife of the said ——— hereby release unto the said grantee and his heirs and assigns all right of or to both dower and homestead in the granted premises." And where the common-law right of dower has been modified by statute, as in Massachusetts, there is inserted after the word "homestead" the words "and all rights by statutes, and all other rights whatever."

A more full form of release of homestead is preferred by some conveyancers substantially as follows:

"And I, ——— wife of the said ———, in consideration of one dollar to me paid by the said ——— (*grantee*), the receipt of which is hereby acknowledged, do hereby release and assign to the said ——— and his heirs and assigns all my right, interest, claim and estate in and to the premises hereinbefore granted under the homestead laws of the State of ——— or any other statutory provisions thereof."

In some of the States, however, in which common-law dower and curtesy have been abolished, the statutory provisions in lieu thereof are such that it is no longer necessary for either husband or wife to join in the other's deeds, except to release homestead. Attention will be called to these in connection with the forms hereinafter given.

If the grantor is unmarried, or has no wife living, the deed should so recite. This is usually done by inserting the words "being unmarried" or "having no wife living" after the grant-

or's name, either at the beginning of the deed or in the In Testimonium clause.

After the deed comes the acknowledgment. This, like the deeds themselves, varies in form in the different States. The following forms have been recommended by the American Bar Association with the view of promoting uniformity throughout the country; and have already been adopted by a considerable number of the States. These, as well as all other forms of acknowledgment, begin with a caption, or heading, as in the first form given, specifying the State and place where the acknowledgment is taken, and are followed by the signature of the official taking the acknowledgment, with his official seal, if he has one.

(113.)

Acknowledgment by Individual.

COMMONWEALTH (OR STATE) OF _____ } ss.
COUNTY OF _____

On this _____ day of _____, 19____, before me personally appeared _____, to me personally known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed.

(Official Character.)

(114.)

Acknowledgment by Attorney.

On this _____ day of _____, 19____, before me personally appeared _____ to me known to be the person who executed the foregoing instrument in behalf of _____ and acknowledged that he executed the same as the free act and deed of said _____.

(115.)

Acknowledgment by Corporation or Joint Stock Association.

On this _____ day of _____, 19____, before me appeared _____, to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer) of (name of corporation or association) and that the seal affixed to said instrument is the corporate seal of said corporation (or association), and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors (or trustees), and said _____ acknowledged said instrument to be the free act and deed of said corporation (or association).

If the corporation or association has no seal omit the reference to a seal, and insert after the word "trustees," "and that said corporation (or association) has no corporate seal."

(116.)

Acknowledgment Outside the United States.

_____ (*Name of Country.*)

_____ (*Name of City, Province or other political subdivision.*)

Before the undersigned _____ (*naming the officer and designating his official title*) duly commissioned (*or appointed*) and qualified, this day personally appeared at the place above named _____ (*naming the person or persons acknowledging*) who declared that he (*she or they*) knew the contents of the foregoing instrument, and acknowledged the same to be his (*her or their*) act.

Witness my hand and official seal this _____ day of _____ 19____
(Seal.) _____ (*Name of Officer.*)

_____ (*Official Title.*)

In making a conveyance of land it is extremely important to comply with the laws of the State in which the land is situated, and to use such forms of deeds as conform to the law and practice of that State. We therefore append to this chapter forms of deeds adapted for use in each of the States and Territories. The forms commonly used are not precisely the same in any two States, but in some the differences are only verbal; and in such cases to save repetition we give only one form, and refer to that in connection with the other States. In most cases these are forms of warranty deeds, but they can easily be turned into deeds of quitclaim or special warranty by following the directions hereinbefore given.

Besides these we have added a number of forms adapted for special purposes, which can easily be altered to conform to the requirements of any particular State. Forms of trust deeds in the nature of mortgages will be found in the next chapter.

In a considerable number of the States, short and simple forms of deeds have recently been authorized by statute. In these most of the technical provisions, including the covenants, are omitted, but the usual covenants are implied. These forms, however, have not displaced the old ones, so in most cases we retain the latter also.

When the form of acknowledgment for any State is peculiar we have added that also. Where no form is given it will be understood that one of the forms given above may be used.

FORMS AND REQUIREMENTS OF DEEDS AND ACKNOWLEDGMENTS FOR ALL THE STATES AND TERRITORIES AND THE DOMINION OF CANADA.

ALABAMA.

(117.)

Warranty Deed.

Know all Men by these presents that, I _____, of _____, in the State of _____, for and in consideration of the sum of _____ dollars to me in hand paid by _____ of _____, the receipt whereof I do hereby acknowledge, have granted, bargained and sold, and by these presents do hereby grant, bargain, sell and convey unto the said _____, his heirs and assigns, the following described real estate, situated in _____ to wit: (description).

To Have and to Hold the aforegranted premises, to the said _____ his heirs and assigns forever.

And I do covenant with the said _____, his heirs and assigns, that I am lawfully seized in fee of the aforegranted premises; that they are free from all incumbrances; that I have good right to sell and convey the same to the said _____ his heirs and assigns, and that I will warrant and defend the said premises to the said _____, his heirs and assigns, forever against the lawful claims and demands of all persons.

And for the consideration aforesaid I _____ wife of the said _____ do hereby release to the said _____ his heirs and assigns, all rights of dower and homestead in the aforegranted premises.

In Witness Whereof, we the said _____ and _____ his wife, set our hands and seals this _____ day of _____ 19____

STATE OF _____, }
COUNTY OF _____, } ss.

I (name and style of officer) hereby certify that _____ whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily, on the day the same bears date. Given under my hand this _____ day of _____, 19____

(118.)

Acknowledgment of Wife's Release of Homestead.

I (name and style of officer) hereby certify that on the _____ day of _____ A.D. 19____, came before me the within named _____ known to me (or made known to me) to be the wife of the within named _____ who, being examined separate and apart from her husband, touching her signature to the within conveyance, acknowledged that she signed the same of her own free will and accord, and without fear, constraint, or threats on the part of the husband. In witness whereof, etc.

(119.)

Acknowledgment by Corporation.

I, _____ a _____ in and for said county and State, hereby certify that _____ whose name as _____ of the _____ a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation. Given under my hand, etc.

Requirements.

Every deed must be attested by a witness, acknowledged, and recorded. If they purport on their face to be sealed instruments, they have such force. Husband must join in conveyance of wife's lands, and wife must join in husband's deed to release dower and homestead.

ALASKA.

For form of deed and acknowledgment see California.

Requirements.

Deeds must be signed before two subscribing witnesses and acknowledged or proved and recorded. Private seals are abolished. No words of inheritance are necessary to pass the fee. Husband joins in deed of wife's land, but no release of dower by wife is necessary.

ARIZONA.

(120.)

Warranty Deed—Statutory Form.

For the consideration of _____ dollars, I hereby convey to _____, of _____, the following tract of real estate (*description*): and I warrant the title against all persons whomsoever.

Witness my hand this _____ day of _____ 19____

STATE OF _____,
COUNTY OF _____, } ss.

This instrument was acknowledged before me this _____ day of _____ 19____, by (if by a natural person here insert name; if by a person acting in a representative or official capacity, or as attorney in fact, then insert name of person as executor, attorney, etc.; if by officer or officers of a corporation, then insert name of officer or officers as such officer, etc.) _____,

Notary Public.
(or other officer.)

My commission expires _____, _____

Requirements.

No witnesses required if deed is acknowledged. No seal necessary except for corporations. Husband and wife must join in deed of community property. Neither need join in conveyance of the other's separate property.

ARKANSAS.

(121.)

Deed of Warranty.

Know all Men by these Presents, That we _____ (name, description, and residence of grantor) and _____ (name of grantor's wife) his wife, for and in consideration of the sum of _____ dollars, to us paid by _____ of _____, do hereby grant, bargain, sell and convey unto the said _____ and his heirs and assigns forever, the following lands lying in the county of _____ and State of Arkansas, to wit: (here describe the premises granted).

To Have and to Hold the same unto the said _____ and unto his heirs and assigns forever, with all appurtenances thereunto belonging.

And I, the said _____ hereby covenant with the said _____ that I _____ will forever warrant and defend the title to said lands against all claims whatever.

And I, _____ wife of the said _____ for and in consideration of the said sum of money, do hereby release and relinquish unto the said _____ all my right of dower and homestead in and to the said lands.

Witness our hands and seals on this _____ day of _____ 19____

(Signatures.) (Seals.)

STATE OF _____, }
COUNTY OF _____, } ss.

Be it Remembered, That on this day came before the undersigned, a (title of office) within and for the county aforesaid, duly commissioned and acting _____ to me well known as the grantor in the foregoing deed, (or, if the grantor is unknown to the officer, say: "who being unknown to me, was proven to my satisfaction to be the identical _____ whose name appears upon the within and foregoing deed as the party grantor, by the oath of _____ and _____, witnesses sworn and examined by me as to such identity"), and stated that he had executed the same for the consideration and purposes therein mentioned and set forth.

And, on the same day, also voluntarily appeared before me, the said _____ wife of the said _____ to me well known, and in the absence of her said husband, declared that she had of her own free will signed and sealed the relinquishment of dower and homestead in the foregoing deed, for the purposes therein contained and set forth, without compulsion or undue influence of her said husband.

Witness my hand and seal as such _____ on this _____ day of _____ 19____

Requirements.

Deeds pass the whole estate of the grantor in the property conveyed, unless specially limited. If duly acknowledged no witnesses are necessary. Private seals are abolished. Wife joins in husband's deed to release dower. She may convey lands acquired since Oct. 10, 1874, as though unmarried.

CALIFORNIA.

(122.)

Warranty Deed.

This Indenture, Made the _____ day of _____ in the year of our Lord one thousand nine hundred and _____, between (*name, residence, and occupation of grantor or grantors*), party of the first part, and (*name, residence, and occupation of the grantee or grantees*), the party of the second part, Witnesseth: that the said party of the first part, for and in consideration of the sum of _____ dollars of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged; doth by these presents, grant, bargain, sell, convey, and confirm unto the said party of the second part, and to his heirs and assigns, forever (*here describe the land or premises granted*).

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the rents, issues, and profits thereof.

To Have and to Hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever. And the said party of the first part, and his heirs, the said premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said party of the first part, and his heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

(Signatures.) (Seals.)

Signed, Sealed, and Delivered in the Presence of

STATE OF _____,
COUNTY OF _____, }

On this _____ day of _____ in the year _____, before me (*name and quality of officer*), in and for said county residing therein, duly commissioned and sworn, personally appeared _____ known to me (*or proved to me on the oath of _____*) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same. In witness whereof, I have set hereunto my hand and affixed my official seal, at my office in _____, County of _____, the day and year in this certificate first above written.

(Signature.)

(123.)

Acknowledgment by Corporation.

On this _____ day of _____ in the year _____ before me _____ personally appeared _____, known to me, (*or proved to me in the oath of _____*) to be the president (*or secretary*) of the corporation that exe-

cuted the within instrument (or if executed by some other person, "to be the person who executed the within instrument on behalf of the corporation therein named"), and acknowledged to me that such corporation acknowledged the same.

(124.)

Statutory Form of Deed.

I, _____, grant to _____ all that real property situate in _____ county and State of California bounded (or described) as follows:

Witness my hand this _____ day of _____ 19____.

Under this form of deed covenants are implied that the premises have not previously been conveyed, and are free from incumbrances made or suffered by grantor or those claiming under him.

Requirements.

Deeds pass the whole title in fee simple, unless an express reservation is made. Wife need not join in husband's deed except to release homestead or in the conveyance of community property, although she usually does so. She may convey as though unmarried. Seals and witnesses are not required. The Torrens system of registration and certification of land titles has been adopted.

COLORADO.

For Form of Deed, see ILLINOIS.

(125.)

Warranty Deed—Statutory Form.

Know All Men by these Presents: That I, _____ of _____ in the County of _____ and State of _____, for the consideration of _____ dollars, in hand paid, hereby sell and convey to _____ of the County of _____ and State of _____, the following real property, situate in the County of _____ and State of Colorado, to wit: _____ with all its appurtenances, and warrant the title to the same.

Signed and delivered this _____ day of _____ 19____.

STATE OF _____, }
COUNTY OF _____, } ss.

I, _____ (name and official title) in and for said _____ county and State aforesaid, do hereby certify that _____, who is personally known to me to be the person whose name is subscribed to the foregoing deed, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument of writing as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and _____ seal this _____ day of _____ A.D.
My commission expires _____

(126.)

Acknowledgment by Corporation.

Be it remembered that on this _____ day of _____ A.D. 19____ before me (*name and official title*) residing in _____ County of _____ and State of _____ duly commissioned to take acknowledgments and proofs of deeds and other instruments in writing under seal, personally came _____ president (*or other officer*) of the _____ company who is known to me to be the person whose name is signed to the foregoing deed of conveyance, who being by me duly sworn, deposes and says, that he resides in _____ in the county of _____ and State of _____; that he is president of the _____ company; that the seal affixed to the foregoing conveyance is the corporate seal of said company; that it was affixed by order of said company; and that he signed the corporate name of said company to said conveyance by like order, as president of said company; and acknowledged that he executed and delivered the said deed on behalf of said company as his free and voluntary act, and that the said company also executed said conveyance as its free and voluntary act, for the uses and purposes therein set forth.

In Witness Whereof, etc.

Requirements.

The whole estate conveyed passes, unless there is an express limitation. No witnesses are required. Seals are abolished. The Torrens system of registration and certification of land titles has been adopted. Neither husband nor wife need join in the deed of the other except to release homestead. Wife must then sign and acknowledge separate and apart from her husband. Notary must state date when commission expires.

CONNECTICUT.

(127.)

Warranty Deed.

To all People to Whom these Presents shall come, Greeting: Know ye, That I, _____ of _____, for the consideration of _____, received to my full satisfaction of _____ of _____, do give, grant, bargain, sell and confirm unto the said _____, (*here insert description of premises*). To have and to hold the above granted and bargained premises, with the appurtenances thereof, unto him the said grantee, and his heirs and assigns forever, to his and their own proper use and behoof. And also I, the said grantor, do, for myself and my heirs, executors and administrators, covenant with the said grantee and his heirs and assigns, that at and until the ensealing of these presents I am well seized of the premises as a good indefeasible estate in fee simple; and have good right to bargain and sell the same in manner and form as is above written; and that the same is free from all incumbrances whatsoever. And furthermore I, the said grantor, do by these presents bind myself and my heirs forever to warrant

and defend the above granted and bargained premises to him, the said grantee, his heirs and assigns, against all claims and demands whatsoever.

In Witness, etc.

State of _____ County of _____, _____, A. D. 19____, Personally appeared _____ signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed, before me _____

Requirements.

The deed must be attested by two witnesses, and it must be recorded in the clerk's office of the town where the lands lie. A scroll answers for a seal. Deeds executed and acknowledged in any other State in conformity with its laws are valid. If married before 1877, husband and wife must join in conveyance of her lands; if married since, neither need join in the other's deed.

DELAWARE.

(128.)

Warranty Deed.

This Indenture, Made the _____ day of _____ in the year of our Lord one thousand nine hundred and _____, between _____ (*name and occupation of grantor*), and _____ his wife, of the county of _____ and State of _____ of the first part, and _____ (*name and occupation of the grantee*), of county of _____ and State of _____, of the second part, Witnesseth: that the said parties of the first part, for and in consideration of the sum of _____ dollars, lawful money of the United States of America, to them well and truly paid, by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, aliene, enfeoff, release, convey, and confirm unto the said _____ and to his heirs and assigns, all that lot, piece, or parcel of land, (*here describe the premises granted*). Together with all and singular the buildings, improvements, ways, woods, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, claim, and demand whatsoever of them, the said parties of the first part, in law, equity, or otherwise howsoever, of, in, and to the same, and every part and parcel thereof.

To Have and to Hold the said land, messuage, hereditaments, and premises hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said _____, his heirs and assigns, to and for the only proper use and behoof of the said _____, his heirs and assigns, forever; and the said _____ (*here insert the name of the grantor and his wife*), for themselves, their heirs, executors, and administrators, do by these presents covenant, promise and agree to and with the said _____, his

heirs and assigns, that they, the said _____, and their heirs, all and singular the hereditaments and premises hereinbefore described and granted or mentioned, or intended so to be, with the appurtenances, unto the said _____, his heirs and assigns, against them, the said _____, their heirs, and against all and every other person or persons whomsoever, lawfully claiming or to claim the same or any part thereof, shall and will by these presents warrant and forever defend.

In Witness Whereof, The said _____ and _____ have hereunto set their hands and seals. Dated the day and year first above written.

(Signatures.) (Seals.)

Sealed and Delivered in the Presence of

STATE OF _____, }
COUNTY OF _____, } ss.

Be it remembered that on this _____ day of _____ A. D. 19____, personally came before me (*name and official title*), _____ and _____ his wife, known to me personally (*or proved on the oath of* _____) to be such, and severally acknowledged this indenture to be their deed, and the said _____ being at the same time privately examined by me apart from her husband, acknowledged that she executed the said indenture willingly, without compulsion or threats, or fear of her husband's displeasure. Given under my hand and official seal the day and year aforesaid.

Requirements.

A deed must be acknowledged, and recorded in the office for the county where the land lies within three months. Only one witness is necessary, and a scroll answers for a seal. Dower and curtesy released by joint deed of husband and wife.

DISTRICT OF COLUMBIA.

(129.)

Warranty Deed.

This Deed, Made this _____ day of _____, in the year one thousand nine hundred and _____, by and between _____ of _____, party of the first part, and _____ of _____, party of the second part, Witnesseth: that in consideration of _____ dollars, the party of the first part doth grant unto the party of the second part, in fee simple, all that piece or parcel of land described as follows, to wit: _____ together with the improvements, rights, privileges and appurtenances to the same belonging. And the said party of the first part covenants that he will warrant the property hereby conveyed, and that he will execute such further assurance of said land as may be requisite.

In Witness, etc.

DISTRICT (OR STATE) OF _____, }
COUNTY OF _____, } ss.

I, _____, a (official title) in and for the _____ of _____ do hereby certify that _____ party to a certain deed bearing date _____ and hereto annexed, personally appeared before me in _____, the said _____ being personally well known to me as the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this _____ day of _____ 19____

Requirements.

Deeds are usually witnessed, although not required by statute to be so. A scroll answers for a seal. Wife joins in husband's deed to release dower. She may convey as though unmarried.

FLORIDA.

(130.)

Warranty Deed—Statutory Form.

This Indenture, Made this _____ day of _____, A. D. 19____, between _____ of the County of _____ in the State of _____, party of the first part, and _____, of the County of _____ and State of _____, party of the second part, Witnesseth: that the said party of the first part, for and in consideration of the sum of _____ dollars to him in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, has granted, bargained and sold to the said party of the second part, his heirs and assigns forever, the following described land, to wit:

And the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

In Witness, etc.

Requirements.

Deeds must be sealed and delivered in presence of at least two witnesses; must be acknowledged before a proper officer, and recorded in the county where the land is situated, within six months after the execution of the same. A scroll answers for a seal. Deed from husband to wife is valid. Husband must join in wife's deed; she joins in his to release dower.

GEORGIA.

(131.)

Warranty Deed.

This Indenture, Made the _____ day of _____, A. D. 19____, between _____ of _____ of the one part, and _____ of _____ the other part, Witnesseth: that the said _____, for and in consideration of the sum of _____ dollars in hand paid at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents doth grant,

bargain, sell and convey, unto the said _____ his heirs and assigns, all that parcel of land situate, etc.

To Have and to Hold the said premises, with all and singular the rights, members and appurtenances thereof, to the same belonging, or in any wise appertaining, to the only proper use, benefit and behoof of the said _____ his heirs, executors, administrators and assigns, in fee simple; and the said (*grantor*), his heirs, executors, administrators and assigns, unto the said (*grantee*), his heirs, executors, administrators and assigns, against the said (*grantor*) his, heirs, executors and administrators, and all and every other person or persons, shall and will warrant and forever defend by virtue of these presents.

In Witness, etc.

Requirements.

The deed must be signed and sealed in the presence of two witnesses, one of whom may be an official qualified to take acknowledgments of deeds, and who signs in his official capacity, in which case no separate acknowledgment is required. If neither witness is such official the grantor may subsequently acknowledge the deed, but no particular form of acknowledgment is required.

The deed must be recorded in the clerk's office of the Superior Court for the county where the land lies. A scroll answers for a seal. The fee passes unless there are limiting words. Wife married since 1866 need not join to release dower. She may convey as though unmarried.

HAWAII.

For form of deeds see California.

(132.)

General Form of Acknowledgment.

On this _____ day of _____ A. D. 19__ personally appeared before me _____ known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein set forth.

Where the person acknowledging is unknown to the officer the following form is used:

On this _____ day of _____ A. D. 19__ personally appeared before me _____ satisfactorily proved to me to be the person described in and who executed the within instrument, by the oath of _____ a credible witness for that purpose, to me known, and by me duly sworn, and he, the said _____ acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein set forth.

Requirements.

All conveyances of real estate, including leases for more than one year, must be in writing, acknowledged before a notary public or other officer,

and recorded in the office of the Register of Conveyances. Wife joins to release dower. She may convey as though unmarried.

IDAHO.

For forms of deed and acknowledgments see California.

Requirements.

Deeds pass all the estate of the grantor without using the word "heirs," unless a different intention is expressed. The difference between sealed and unsealed instruments is abolished. No witness is required. The Torrens system of registration and certification of land titles has been adopted. Wife need join only in conveyance of community property and of homestead. She may convey as though unmarried.

ILLINOIS.

(133.)

Warranty Deed.

This Indenture, Made this _____ day of _____ in _____ the year of our Lord one thousand nine hundred and _____ between _____ (*name and occupation of the grantor*), of the County of _____ State of _____ and _____ his wife of, the first part, and _____ (*name and occupation of the grantee*) of the County of _____ and State of _____ of the second part, Witnesseth: That the said parties of the first part, for and in consideration of the sum of _____ dollars, to them in hand paid by the party of the second part, the receipt of which is hereby acknowledged, have given, granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents do give, grant, bargain, sell, remise, release, aliene, and confirm unto the said party of the second part, his heirs and assigns forever, the following described premises, real estate, lying and being in the County of _____ State of Illinois, to-wit: (*here describe the land granted*).

Together with All and Singular, the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion or reversions, remainder and remainders, and the issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever of the said parties of the first part, either in law or equity, of and to the above bargained premises, with the hereditaments and appurtenances thereto belonging.

To Have and to Hold the same premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said parties of the first part for, themselves and their heirs, executors, and administrators, do covenant, grant, bargain, and agree, to and with the said party of the second part, his heirs and assigns, that at the time of ensembling and delivery of these presents, they are well seized of the premises above conveyed, as of good, sure, perfect, absolute, and indefeasible estate of inheritance in the law in fee-simple, and

have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same is free and clear of all former and other grants, bargains, sales, liens, judgments, taxes, assessments, and incumbrances of what kind and nature soever, and the parties of the first part, the above bargained premises, in the quiet and peaceable possession of the said party of the second part, his _____ heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, will warrant and forever defend.

And the said parties of the first part hereby expressly waive and release any right, benefit, privilege, advantage and exemption under or by virtue of any and all statutes of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise.

In Witness Whereof, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

(Signatures.) (Seals.)

(134.)

Statutory Form.

The grantor _____ of _____ in the County of _____ and State of _____, for and in consideration of _____ dollars in hand paid, conveys and warrants to _____ of _____ in the County of _____ and State of _____, the following described real estate: (*here insert description*), situated in the County of _____ in the State of Illinois; hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this State.

Dated this _____ day of _____ 19____

STATE OF _____, }
COUNTY OF _____, } ss.

I, _____ (*name and title of officer*) do hereby certify that _____ and _____ his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead. Given under my hand and official seal this _____ day of _____ 19____.

Requirements.

Deeds convey the whole interest, unless there be a limitation. No witnesses are required, and a scroll answers for a seal. The Torrens system of registration and certification has been adopted in Cook County. Husband and wife join in each other's deeds to release statutory dower interests.

INDIANA.

(135.)

Warranty Deed—Statutory Form.

A. B., conveys and warrants to C. D., (*here describe the premises*) for the sum of _____.

Dated _____

(*Signature.*)

(136.)

Quitclaim Deed.

A. B. quitclaims to C. D. (*here describe the premises*) for the sum of _____

Requirements.

The word "heirs" is not necessary in deeds, and seals and scrolls are abolished. Witnesses are not necessary. Deed should contain post-office address of grantee. Husband must join in conveyance of wife's lands. He may convey his lands alone subject to her inchoate rights.

IOWA.

For forms of deeds, see Massachusetts.

(137.)

Warranty Deed—Statutory Form.

For the consideration of _____ dollars I hereby convey to _____ the following tract of real estate (*description*); and I warrant the title against all persons whomsoever.

Requirements.

Every deed passes the grantor's whole interest, unless a contrary intent appears. Seals are not necessary, neither are witnesses. Husband and wife join in each other's deeds to release statutory dower and curtesy.

KANSAS.

(138.)

Warranty Deed.

This Indenture, Made on the _____ day of _____, A. D. 19____, by and between _____ of _____ party of the first part, and _____ of _____ party of the second part, Witnesseth: that the said party of the first part, for and in consideration of the sum of _____ dollars to him paid by the party of the second part, the receipt of which is hereby acknowledged, doth by these presents grant, bargain, sell, convey, and confirm unto the said party of the second part, his heirs and assigns, all the following described real estate situated in _____ to wit: To have and to hold the

premises aforesaid with all and singular the tenements, hereditaments, rights, privileges and appurtenances thereunto belonging or in any wise appertaining, unto the said party of the second part, and unto his heirs and assigns forever; and the said _____ for himself and his heirs, executors and administrators, doth hereby covenant, promise and agree to and with the said party of the second part, that at the delivery of these presents he is lawfully seized in his own right of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted and described premises, with the appurtenances; that the same are free, clear, discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature or kind soever; and that he will warrant and forever defend the same unto the said party of the second part and his heirs and assigns against said party of the first part, his heirs, and all and every person or persons whomsoever, lawfully claiming or to claim the same.

In Witness, etc.

(139.)

Statutory Form.

_____ conveys and warrants to _____ (*description of premises*) for the sum of _____. Dated, etc.

For Acknowledgments, see UNIFORM FORM, *ante* p. 447.

Requirements.

Private seals except of corporations are abolished. Witnesses are not required. The entire estate passes unless the grant is expressly limited. Husband must join in conveyance of wife's property. Wife should join in husband's deed, but need not if she has never resided in the State.

KENTUCKY.

(140.)

Warranty Deed.

This Deed between _____ of _____, of the first part, and _____, of _____, of the second part, Witnesseth: that for and in consideration of _____ (*State what part, if any, remains unpaid, and add: "to secure the payment of which a lien is hereby retained"*), the receipt whereof is hereby acknowledged, said party of the first part doth hereby sell and convey unto the party of the second part a certain parcel of land in _____ described as follows: being the same premises (*or a part of the same premises*) conveyed by _____ to _____ by deed dated _____ and recorded in Deed Book _____ page _____ in the office of the clerk of the _____ County Court (*Give next immediate source of title, whether by deed, will or inheritance, showing how grantor's title was derived*).

To Have and to Hold, said land with its appurtenances, unto said party of the second part, his heirs and assigns, forever, with covenant of General

Warranty; and the said party of the first part further covenants with said party of the second part, his heirs and assigns, that said party of the first part is lawfully seized of said land in fee simple, and has full right and power to convey the same, and that said land is free from all incumbrances. In witness whereof said party of the first part has herunto set his hand this _____ day of _____ 19____

STATE OF _____, }
COUNTY OF _____, } ss.

I, _____ (*name and title*) do certify that this instrument of writing from _____ and his wife _____ was this day produced to me in my county by the parties, and acknowledged by the said _____ and _____ his wife to be their act and deed respectively.

Given under my hand and seal of office this _____ day of _____ 19____

Requirements.

The deed should be acknowledged, and recorded in the office of the clerk of the court for the county where the land is; if not acknowledged, it may be proved by two subscribing witnesses. Seals are abolished. The entire estate passes unless the grant is expressly limited. Deed must state source of grantor's title. Husband and wife join in each other's deeds to release statutory dower. If a lien for purchase money is claimed, the post-office address of the grantee must be given.

LOUISIANA.

(141.)

Warranty Deed.

STATE OF LOUISIANA.

PARISH AND CITY OF NEW ORLEANS.

Be it Known, That on this _____ day of _____ in the year of our Lord one thousand nine hundred and _____, and of the independence of the United States of America the one hundred and _____, before me, _____, a Notary Public in and for the Parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared _____ (*name, residence, and occupation of grantor or grantors*) who declared that for the consideration and on the terms and conditions hereinafter expressed (*he or they*) by these presents grant, bargain, sell, convey, transfer, assign, and set over, with a full guarantee against all troubles, debts, mortgages, liens, evictions, alienations, or other incumbrances of every nature and kind whatsoever, unto (*name, residence, and occupation of grantee or grantees*) here present, his heirs and assigns, and acknowledging delivery and possession thereof, a certain lot of land together with the improvements thereon, and all rights, ways, privileges, and appurtenances thereunto belonging or in any wise appertaining, situate in the _____ (*here describe the land or premises granted*).

To Have and to Hold the said property and appurtenances unto the said purchaser, his heirs and assigns forever.

And the said vendor hereby binds himself and his heirs forever to warrant and defend the property and appurtenances herein conveyed, against all legal claims and demands whatever.

The said vendor moreover transfers unto the said purchaser all the rights and actions of warranty to which he is or may be entitled, against all the former proprietors of the property herein conveyed, subrogating said purchaser to the said right and actions, to be by him enjoyed and exercised in the same manner as they might have been by the said vendor.

This Sale is Made and Accepted for and in consideration of the price and sum of _____

According to the several certificates of the Recorder of Mortgages and the Register of Conveyances in and for this City and Parish, bearing even date herewith, and hereto annexed for reference, it appears that the said vendor has not alienated the herein described and conveyed property, and that the same is free from all mortgages or other incumbrances in his name.

And now to these presents, personally came and appeared Madam _____ wife of said _____ who after having taken cognizance of the foregoing act, which I, the said Notary, carefully read and explained to her, declared and said that she approves and ratifies the same, and that it is her wish and intention to release in favor of the said purchaser, the property herein described, from the matrimonial, dotal, paraphernal, and other rights, and from any claims, mortgages, or privileges to which she may be entitled, whether by virtue of marriage with her said husband, or otherwise.

Whereupon I, the said Notary, did inform the said _____ apart, and out of the presence and hearing of her husband, and before receiving her signature hereto, that by the laws of this State, the wife has a legal mortgage on the property of her husband: *First*. For the restitution of her dowry, and for the reinvestment of the total property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage. *Secondly*. For the restitution and reinvestment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened or the donation perfected. *Thirdly*. For nuptial presents. *Fourthly*. For debts by her contracted with her husband. And *Fifthly*. For the amount of her paraphernal property alienated by her and received by her husband, or otherwise disposed of for his individual interest: That in making her intended renunciations she would deprive herself irrevocably and forever of all the rights of reclamation against the property herein described, whether under mortgage privilege or otherwise.

And the said _____ did thereupon declare unto me, Notary, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal, and other rights and privileges thus secured to her by the law on the property of her said husband, and that

she nevertheless did persist in her intention of renouncing, and does formally renounce, not only all the rights, claims, and privileges hereinbefore enumerated and described, but all others of any nature and kind whatever to which she is or may be entitled, by any laws now or heretofore in force in the State of Louisiana.

And the said _____ (*grantor*) being now present, aiding and authorizing the said _____ (*wife*) in the execution of these presents, the said _____ (*wife*) did again declare that she did and does hereby make a formal renunciation and relinquishment of all her said matrimonial, dotal, paraphernal, and other rights, claims and privileges, in favor of said purchaser, binding herself and her heirs at all times to sustain and acknowledge the validity of this renunciation.

Thus Done and Passed, in my office at New Orleans, aforesaid, in the presence of _____ and _____ witnesses, both of this city, who hereunto sign their names with the parties, and me, the said Notary, the day and date aforesaid.

(*Signatures.*) (*Seals.*)

STATE OF LOUISIANA,

COUNTY OF _____

Before me, the undersigned authority, personally came and appeared _____ to me personally known, who signed the foregoing document before me and in the presence of the two subscribing witnesses, and acknowledged in the presence of said witnesses that he had signed the above and foregoing as his voluntary act and deed and for the uses and purposes therein set forth.

In faith whereof, I have hereunto set my hand and the seal of my office this _____ day of _____ at _____

(*Signature of officer and title.*)

(*Signature of grantor.*)

(*Signature of two witnesses.*)

The deed executed as above is retained by the notary, who gives the parties certified copies.

Requirements.

Deeds should be acknowledged and attested by the person taking the acknowledgment and two male witnesses, and should be recorded in the parish where the property is. No seal or scroll is necessary. Wife need not join in husband's deed of land unless she has a mortgage or privilege against it, but he must join in her deed.

MAINE.

For Forms and Deeds and Acknowledgments, see MASSACHUSETTS.

Requirements.

Deeds must be sealed (a scroll is not sufficient), and must be acknowledged by the grantor, or if there be more than one grantor then by one of them. No witnesses are required. Wife joins in husband's deed to release statutory interest. He need not join in her deed, except of land directly conveyed to her by him.

MARYLAND.

(142.)

Warranty Deed.

This Deed, Made this _____ day of _____, 19____, between _____, of _____, party of the first part, and _____, of _____, part of the second part, Witnesseth: that in consideration of _____ dollars, the said _____ doth grant and convey unto the said _____ his heirs and assigns, in fee simple all that, *etc. (description)*; together with the buildings and improvements thereon, and the rights, privileges and appurtenances thereto belonging or appertaining. To have and to hold the land and premises hereby mentioned to be granted and conveyed, with the rights, privileges and appurtenances aforesaid, unto the said _____, his heirs and assigns, to his and their proper use and benefit forever in fee.

And the said _____ covenants that he has not done, or suffered to be done, any act, matter or thing, whatsoever, to incumber the property hereby conveyed; that he will warrant said property generally to the said _____ his heirs and assigns; and that he will execute such further assurance of said land as may be requisite. Witness the hand and seal of said grantor.

(143.)

Warranty Deed under Statute.

This Deed, Made this _____ day of _____ in the year _____ by us _____ (*name of grantor*) and _____ (*name of wife*).

Witnesseth, That, in consideration of _____ we the said _____ and _____, do grant unto _____ all that (*description of property*). And we, the said _____ and _____ covenant that we will warrant generally the property hereby conveyed, and that the said _____ shall quietly enjoy the same.

Witness our hands and seals.

Test.

(Signatures.) (Seals.)

STATE OF _____, }
COUNTY OF _____, } ss.

I hereby certify that on this _____ day of _____, in the year _____, before the subscriber, (*here give title of officer taking acknowledgment*), personally appeared _____, and acknowledged the foregoing deed to be his act.

(Signature and title.)

Requirements.

All deeds must be signed and sealed. They require at least one witness, and must be acknowledged and recorded within six months. A scroll answers for a seal. The entire fee passes unless a contrary intent appears. Wife joins to release dower; husband joins in wife's deed to release similar statutory interest.

MASSACHUSETTS.

(144.)

Warranty Deed.

Know all Men by these Presents, That I, _____ of _____ in the county of _____ and State of _____ in consideration of _____ dollars to me paid by _____ of _____, the receipt of which is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said _____ a certain parcel of land situate in _____ and bounded and described as follows, viz: (*description*).

To Have and to Hold the granted premises with all the privileges and appurtenances thereto belonging, to the said _____, his heirs and assigns, to his and their use and behoof forever.

And I do hereby, for myself and my heirs, executors and administrators, covenant with the said grantee, his heirs and assigns, that I am lawfully seized in fee-simple of the granted premises; that they are free from all incumbrances; that I have good right to sell and convey the same as aforesaid; and that I will, and my heirs, executors and administrators shall, warrant and defend the same to the said grantee, his heirs and assigns forever, against the lawful claims and demands of all persons.

And for the consideration aforesaid I, _____ wife of the said _____ do hereby release unto the grantee and his heirs and assigns, all right of or to both dower and homestead, and all statutory rights and all rights whatever in the granted premises.

In Witness Whereof, we the said _____ and _____ hereunto set our hands and seals this _____ day of _____, 19____.

Statutory Form.

I, _____, of _____, for consideration paid, grant to _____, of _____, with warranty covenants, the land in _____ (*description and incumbrances, if any*). And I, _____, wife of said grantor, release to said grantee all rights of dower and homestead and other interests therein.

Witness, etc.

COMMONWEALTH (OR STATE) OF _____, } ss. _____, 19____
COUNTY OF _____,

Then personally appeared the above named _____ and acknowledged the foregoing instrument to be his free act and deed, before me.

Requirements.

Conveyances are signed and sealed by the grantor, and acknowledged by him, or if there be more than one grantor, then by one of them. No witnesses are necessary. A scroll is not sufficient. The entire estate passes unless the conveyance is expressly limited. Husband joins in wife's deed and wife in husband's to release dower, curtesy and interest by statute. Notary should give date when commission expires.

The Torrens system of land-title registration and certification has been adopted.

MICHIGAN.

(145.)

Warranty Deed.

This Indenture, Made this _____ day of _____ in the year of our Lord one thousand nine hundred and _____, between _____, of _____, of the first part, and _____, of _____, of the second part, Witnesseth: that the said party of the first part, for and in consideration of the sum of _____ dollars, to him in hand paid by the party of the second part, the receipt whereof is hereby confessed and acknowledged, doth by these presents grant, bargain, sell, remise, release, aliene, and confirm unto the said party of the second part, and his heirs and assigns forever, all that certain piece or parcel of land situate and being in the _____ of _____, County of _____, and State of Michigan, and described as follows, to wit: (*description*). Together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining.

To Have and to Hold the said premises, as above described, with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever. And the said party of the first part, his heirs, executors and administrators, doth covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he was well seized of the above granted premises in fee simple; and that they are free from all incumbrances whatever, and that the said _____ will, and his heirs, executors and administrators shall, warrant and defend the same against all lawful claims whatsoever.

In Witness, etc.

For acknowledgment see Uniform Acknowledgment, *ante* p. 447.

(146.)

Statutory Form.

A. B. conveys and warrants to C. D. (*description of premises*), for the sum of _____.

Requirements.

Deeds must be witnessed by at least two persons. A scroll answers for a seal. Words of inheritance not necessary. Deed conveys grantor's entire interest unless otherwise expressed. Deed must show whether male grantor is married or single. Wife joins to release dower. She may convey as though unmarried.

MINNESOTA.

(147.)

Warranty Deed.

This Indenture, Made this _____ day of _____, A. D. one thousand nine hundred and _____ between (*name and occupation of the grantor*)

of the County of _____ and State of _____ party of the first part, and _____ (*name and occupation of the grantee*) of the County of _____ and State of _____ party of the second part,

Witnesseth, That the said party of the first part, in consideration of the sum of _____ dollars, to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, and convey, to the said party of the second part, his heirs and assigns forever, all the following described piece or parcel of land, lying and being in the County of _____ and State of Minnesota, to wit (*here describe the land or premises granted*).

To Have and to Hold the Same, together with all the hereditaments and appurtenances thereunto in any wise appertaining. And the said _____ party of the first part, for himself and his heirs, executors and administrators, does covenant with the said party of the second part, his heirs and assigns, as follows: That he is lawfully seized of said premises, in fee simple, and that he has good right and power to grant and convey the same; that the same are free from all incumbrances; and that the said party of the second part, his heirs and assigns, shall quietly enjoy and possess the same; and that the said party of the first part will warrant and defend the title to the same against all lawful claims.

In Testimony Whereof, The said party of the first part hereunto sets his hand and seal, the day and year above written.

(*Signature.*) (*Seal.*)

Signed, Sealed, and Delivered in the Presence of

(148.)

Statutory Form.

A. B. grantor, of _____, for and in consideration of _____ conveys and warrants to C. D., grantee, of _____ the following described real estate in the County of _____ in the State of Minnesota (*description*).

For acknowledgment, see Uniform Acknowledgment, p. 447.

Requirements.

Two witnesses are necessary. Private seals are abolished. Words of inheritance are not necessary in order to pass the fee. Husband and wife join in each other's deeds to release statutory interests in lieu of dower and curtesy.

MISSISSIPPI.

(149.)

Warranty Deed.

This Indenture, Made and entered into this _____ day of _____ in the year of our Lord, one thousand nine hundred and _____ between (*name, residence and occupation of the grantor*), _____ and _____ his wife, the parties of the first part and _____ (*name, residence, and occupation of the grantee*), party of the second part, Witnesseth: That

the said parties of the first part, for and in consideration of the sum of _____ dollars, the receipt whereof is hereby acknowledged, have this day granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey unto the said party of the second part, and to his heirs and assigns, all and singular the following described parcel of land situate, lying, and being in the _____ (*here describe the land or premises granted*).

To Have and to Hold the said parcel of land together with all and singular the rights, privileges, and appurtenances thereunto legally and of right belonging, to the said party of the second part, and to his heirs and assigns in fee-simple, absolute forever, and the said parties of the first part for themselves, their heirs, executors, administrators, and assigns, covenant and agree to warrant and forever defend the right, title, interest, and possession of the estate herein granted, to the said party of the second part, his heirs and assigns, against the claim or claims of any and all persons whatsoever claiming or to claim the same either in law or equity.

In Testimony Whereof, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

(Signatures.) (Seals.)

STATE OF _____, }
COUNTY OF _____, } ss.

Personally Appeared, Before me _____ (*name and official title*) the above named _____ and _____ who acknowledged that they signed, sealed, and delivered the foregoing deed, on the day and year therein written, as their act and deed, for the purposes therein set forth.

(150.)

Statutory Form.

In consideration of _____ I convey and warrant to _____ the land described as _____. Witness my signature the _____ day of _____, 19____.

Requirements.

If deed is acknowledged no witnesses are required, otherwise two are necessary. No seal is required, except of corporation. Words of inheritance not necessary. Deed passes grantor's entire interest unless specially limited. Husband and wife join in conveying the estate of either.

MISSOURI.

(151.)

Warranty Deed.

This Indenture, Made on the _____ day of _____ A. D. one thousand nine hundred and _____, by and between _____, of _____, and _____, his wife, parties of the first part, and _____, of _____, party of the second part, Witnesseth: that the said parties of the first part,

in consideration of the sum of _____ dollars to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents, grant, bargain, sell, convey, and confirm unto the said party of the second part, his heirs and assigns, the following described lots, tracts, or parcels of property, lying, being, and situate in the county of _____ and State of Missouri, to wit: (*here describe the premises granted*).

To Have and to Hold the premises aforesaid, with all and singular the rights, privileges, appurtenances, and immunities thereto belonging, or in any wise appertaining, unto the said party of the second part, and unto his heirs and assigns forever; the said _____ (*name of the grantor*) hereby covenanting that he is lawfully seized of an indefeasible estate in fee in the premises herein conveyed; that he has good right to convey the same; that the said premises are free and clear of any incumbrances done or suffered by him or those under whom he claims, and that he will warrant and defend the title to the said premises unto the said party of the second part, and unto his heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

In Witness Whereof, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

(*Signatures.*) (Seals.)

Signed, Sealed, and Delivered in the Presence of

For form of Acknowledgment see Uniform Acknowledgment, *ante* p. 447.
Notary should give date when commission expires.

Requirements.

Witnesses are not necessary, but one or more usual. The deed need not be under seal unless executed by a corporation. Husband and wife join in conveying each other's lands.

MONTANA.

(152.)

Warranty Deed.

This Indenture, Made the _____ day of _____, A. D. one thousand nine hundred and _____, between _____ of _____ party of the first part, and _____ of _____ party of the second part, Witnesseth: that the said party of the first part, for and in consideration of the sum of _____ dollars (\$_____) lawful money of the United States of America, to him in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, doth by these presents grant, bargain, sell, convey, warrant and confirm unto the said party of the second part, and to his heirs and assigns forever, the hereinafter described real estate, situated in the _____ of _____, County of _____, and State of Montana, to wit: (*description*). Together with all and singular the hereinbefore described premises, with all tenements, hereditaments and appurtenances thereto belonging, or in any wise appertaining, and the reversion or re-

versions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, right of dower and right of homestead, possession, claim and demand whatsoever, as well at law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances thereto belonging. To have and to hold all and singular the above mentioned and described premises unto the said party of the second part, and to his heirs and assigns forever.

And the said party of the first part, for himself and his heirs, doth hereby covenant that he will forever warrant and defend all right, title and interest in and to the said premises, and the quiet and peaceable possession thereof, unto the said party of the second part, his heirs and assigns, against the acts and deeds of the said party of the first part and all and every person and persons whomsoever lawfully claiming or to claim the same. In witness whereof, etc.

(153.)

Statutory Form.

I, _____ in consideration of _____ dollars now paid, grant to _____ all the real property situated in _____ County, and State of Montana, bounded (or described) as follows: (*description, or descriptive name, if it has one*). Witness my hand this _____ day of _____, 19____

STATE OF _____, }
COUNTY OF _____, } ss.

On this _____ day of _____ in the year _____ before me (*name and official title*) personally appeared _____, known to me (*or proved to me on the oath of _____*) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

(*If executed before a Notary Public*): Notary Public for the State of _____ residing at _____. My commission expires _____

Requirements.

If acknowledged, no witness is required. Private seals abolished. Entire estate passes unless grant is expressly limited. Wife joins to release dower, but resident husband whose wife has never lived in the State may convey as though unmarried. She may convey as though unmarried.

NEBRASKA.

For Form of Deeds, see MASSACHUSETTS.

(154.)

Acknowledgment (Husband and Wife).

On this _____ day of _____, 19____, personally appeared before me (*name and official title*), in and for said county, _____, and _____ his wife, whose names are subscribed to the foregoing instrument as parties

thereto, personally known (or on the oath of _____, for that purpose by me duly sworn, satisfactorily proved) to me to be the individuals described in, and who executed the same as parties thereto, and they severally acknowledged the same to be their voluntary act and deed.

In Witness, etc.

Requirements.

One or more witnesses required. Private seals abolished. Words of inheritance not necessary. Deed passes all grantor's interest unless specially limited. Notary taking acknowledgment must give date when commission expires. Husband and wife should join in deed of either. Deed or mortgage must state actual consideration. The Torrens system of land titles and registration has been adopted.

NEVADA.

For Form of Deed, see CALIFORNIA.

STATE OF _____, }
COUNTY OF _____, } ss.

On this _____ day of _____ A. D. _____ personally appeared before me _____ (*Notary public or other officer*) in and for said county, _____ known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In Witness Whereof, etc.

Requirements.

Words of inheritance are not necessary. Deed conveys all grantor's interest, unless specially limited. Neither witnesses nor seals required. Wife need join only to convey homestead. She may convey and acknowledge as though unmarried. Husband may convey community property alone.

NEW HAMPSHIRE.

(155.)

Warranty Deed.

Know all Men by these Presents, That I, _____ of _____ for and in consideration of the sum of _____ dollars to me in hand before the delivery hereof well and truly paid by _____, of _____, the receipt whereof I do hereby acknowledge, have given, granted, bargained and sold, and by these presents do give, grant, bargain, sell, aliene, enfeoff, convey and confirm unto the said _____, his heirs and assigns forever, (*describe premises*). To have and to hold the said granted premises, with all the privileges and appurtenances to the same belonging, to him the said grantee and his heirs and assigns, to his and their proper use and benefit forever.

And I, the said grantor, and my heirs, executors and administrators, do hereby covenant, grant and agree to and with the said grantee and his

heirs and assigns, that, until the delivery hereof, I am the lawful owner of the said premises, and am seized and possessed thereof in my own right in fee simple; and have full power and lawful authority to grant and convey the same in manner aforesaid; that the said premises are free and clear from all and every incumbrance whatsoever; and that I and my heirs, executors and administrators shall and will warrant and defend the same to the said grantee and his heirs and assigns against the lawful claims and demands of any person or persons whomsoever.

And I, _____, wife of the said _____, in consideration aforesaid, do hereby relinquish my right of dower in the before-mentioned premises.

And we and each of us do hereby release, discharge and waive all such rights of exemption from attachment and levy or sale on execution, and such other rights whatsoever in said premises, and in each and every part thereof, as our family homestead, as are reserved or secured to us, or either of us, by the statute of the State of New Hampshire passed July 4, 1851, entitled, "An Act to exempt the homestead of families from attachment and levy or sale on execution," or by any other statute or statutes of said State.

In Witness, etc.

For Acknowledgment, see MASSACHUSETTS.

Requirements.

Deed must be attested by one or more witnesses. A seal is required. A scroll is not sufficient. Husband and wife join each in the deed of the other, to release dower or curtesy. Both should acknowledge.

NEW JERSEY.

(156.)

Warranty Deed.

This Indenture, Made the _____ day of _____ in the year one thousand nine hundred and _____, between _____, of _____, and _____, his wife, parties of the first part, and _____ of _____ party of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of _____ lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, aliene, enfeoff, release, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all (*here describe the premises granted*). Together with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also, all the estate, right, title, interest, property, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part,

of, in or to the above described premises, and every part and parcel thereof, with the appurtenances.

To Have and to Hold all and singular the above-mentioned and described land and premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, to their own proper use, benefit, and behoof forever.

And the said _____ for himself and his heirs, executors, and administrators doth covenant, grant, and agree, to and with the said party of the second part, his heirs and assigns, that the said _____ at the time of the sealing and delivery of these presents, is lawfully seized of a good, absolute, and indefeasible estate of inheritance in fee-simple, of and in all and singular the above granted, bargained, and described premises, with the appurtenances, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid.

And that the same now are free, clear, discharged, and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and incumbrances of what nature or kind soever.

And that the said party of the second part, his heirs and assigns shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy, the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance, of the said parties of the first part, their heirs or assigns, or of any other person or persons lawfully claiming, or to claim the same.

And the said _____ and his heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

(Signatures.) (Seals.)

Signed, Sealed, and Delivered in the Presence of

STATE OF _____, }
COUNTY OF _____, } ss.

Be it Remembered, That on this _____ day of _____ in the year one thousand nine hundred and _____ before me the subscriber (*name and official title*) personally appeared A. B. and C. D. his wife who, I am satisfied, are the grantors named in and who executed the within Indenture; and I having first made known to them the contents thereof, they did severally acknowledge that they signed, sealed, and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

And the said C. D. being of full age, and being by me privately examined, separate and apart from her said husband, did further acknowledge that she signed, sealed, and delivered the same as her voluntary

act and deed freely, and without any fear, threats, or compulsion of or from her said husband. All of which is hereby certified under my hand and official seal at _____, the day and year aforesaid.

Requirements.

One witness usual, but not required. A scroll answers for a seal. Husband must join in wife's deed; and wife in husband's to release dower.

NEW MEXICO.

For Form of Deeds, see ILLINOIS.

(157.)

For Acknowledgment, see UNIFORM ACKNOWLEDGMENT, *ante* p. 447.

Requirements.

Neither seals nor witnesses are required. Husband or wife may convey without the other, except in conveyance of homestead.

NEW YORK.

(158.)

Warranty Deed.

This Indenture, made the _____ day of _____ in the year one thousand nine hundred and _____, between _____, of _____, of the first part, and _____, of _____, of the second part,

Witnesseth: that the said party of the first part in consideration of _____dollars, lawful money of the United States, paid by the party of the second part, doth hereby grant and release unto said party of the second part, his heirs and assigns forever (*here describe the premises*); together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To Have and to Hold, the above granted premises unto the said party of the second part, his heirs and assigns forever.

And the said party of the first part doth covenant with said party of the second part as follows:

First. That the party of the first part is seized of the said premises in fee simple, and has good right to convey the same.

Second. That the party of the second part shall quietly enjoy the same.

Third. That said premises are free from incumbrances.

Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises.

Fifth. That the party of the first part will forever warrant the title to said premises.

In Witness Whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

In the presence of _____

Requirements.

The foregoing short form of deed is prescribed by statute, and the Recorder is authorized to charge an extra fee for longer forms.

The places of residence of the parties should be given by street and number whenever practicable. If deed is acknowledged no witness necessary. A seal is required but the word "seal," or letters "L. S." are sufficient. Words of inheritance not required. Deed conveys all grantor's interest unless specially limited. Husband and wife join, each in the others conveyances to release dower or curtesy. No separate examination of the wife is now required.

Usual forms of acknowledgments substantially same as Uniform Acknowledgment, *ante* p. 447.

The Torrens system of land title registration and certification has been adopted.

NORTH CAROLINA.

For Forms of Deeds, see MASSACHUSETTS.

(159.)

Acknowledgment by Husband and Wife.

STATE OF _____, }
COUNTY OF _____, } ss.

I, (*name and official title*), do hereby certify that _____ and _____ his wife personally appeared before me this day, and acknowledged the due execution of the within deed of (*conveyance or mortgage*); and the said _____ being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or compulsion of her said husband or any other person, and that she doth still voluntarily assent thereto.

Witness my hand and seal, this _____ day of _____, A. D. 19____

Requirements.

Where acknowledgment is taken before a justice of the peace out of county where deed is to be registered, it must be accompanied by certificate of clerk of court of record that he was an acting justice and that his signature is genuine. Witnesses not required when deed is acknowledged. Scroll answers for seal. Husband must join in wife's deed; wife joins in husband's to release dower.

NORTH DAKOTA.

(160.)

Warranty Deed.

This Indenture, Made this _____ day of _____, in the year of our Lord one thousand nine hundred and _____, between _____, of _____, party of the first part, and _____, of _____, party of the second part,

Witnesseth: that the said party of the first part, in consideration of the sum of _____ dollars to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns forever, all that tract or parcel of land lying and being in the county of _____ and State of North Dakota, to wit: _____

To Have and to Hold the same, together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining, to the said party of the second part, his heirs and assigns, forever. And the said _____ party of the first part, for himself, his heirs, executors and administrators, covenants with the said party of the second part, his heirs and assigns, that he is well seized in fee of the lands and premises aforesaid, and has good right to sell and convey the same in manner and form aforesaid; that the same are free from all incumbrances, and the above bargained and granted lands and premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part will warrant and defend. In testimony whereof, etc.

(161.)

Acknowledgment.

On this _____ day of _____ in the year _____ personally appeared _____ known to me (or proved to me on the oath of _____) to be the person who is described in and who executed the within instrument, and acknowledged to me that he executed the same.

Requirements.

No witness or seal is required.

The deed of a corporation must be acknowledged by its president or secretary. Neither husband nor wife need join in the conveyances of the other. Each may convey to the other. The Torrens system of land title and registration has been adopted.

OHIO.

(162.)

Warranty Deed.

Know all Men by these Presents, That I, _____, of _____, the grantor (if unmarried so state), for the consideration of _____ dollars (\$_____) received to my satisfaction from _____, of _____, the grantee, do give, grant, bargain, sell and convey unto the said grantee, his heirs and assigns, the following described premises, situate in the _____ of _____, County of _____, and State of Ohio, to wit: (description), but subject to all legal highways.

To Have and to Hold the above granted and bargained premises, with the appurtenances thereof, unto the said grantee, his heirs and assigns for-

ever. And I, the said grantor, for myself and my heirs, executors and administrators, covenant with the said grantee, his heirs and assigns, that at and until the enrolling of these presents I am well seized of the above described premises as a good and indefeasible estate in fee simple, and have good right to bargain and sell the same in manner and form as above written, and that the same are free from all incumbrances whatsoever; and that I will warrant and defend said premises, with the appurtenances thereunto belonging, to the said grantee, his heirs and assigns, against all lawful claims and demands whatsoever.

And I (*if married, here insert name of husband or wife*), wife (*or husband*) of the said _____ do hereby release and forever quitclaim unto the said grantee, his heirs and assigns, all my right and expectancy of dower in the above described premises.

In witness whereof we have hereunto set our hands the _____ day of _____, in the year of our Lord one thousand nine hundred and _____.

See Uniform Form of Acknowledgment, *ante* p. 447.

Requirements.

Two witnesses are required. Private seals are abolished. Husband and wife join in and acknowledge each other's deeds to release dower, etc.

OKLAHOMA.

(163.)

Warranty Deed—Statutory Form.

Know all Men by these Presents, That _____ of _____, party of the first part, in consideration of the sum of _____ dollars in hand paid, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto _____, of _____, party of the second part, the following described real property and premises, situate in _____ County, State of Oklahoma, to wit; (*description*), together with all the improvements thereon and the appurtenances thereunto belonging, and warrants the title to the same. To have and to hold said described premises unto the said party of the second part, his heirs and assigns forever, free, clear, and discharged of and from all former grants, charges, taxes, judgments, mortgages, and other liens and incumbrances of whatsoever nature. Signed and delivered this _____ day of _____, 19____.

STATE OF _____, }
COUNTY OF _____, } ss.

Before me, a _____ in and for said County and State, on this _____ day of _____, 19____, personally appeared _____ and _____ his wife, to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed, for the uses and purposes therein set forth.

(*Signature and Seal.*)

My commission expires _____

Requirements.

Neither witnesses nor seals are necessary. Husband or wife need not join in the other's deed except to release homestead.

OREGON.

(164.)

Warranty Deed.

Know all Men by these Presents, That I, _____ of _____, in consideration of _____ dollars to me paid by _____ of _____, have bargained and sold, and by these presents do grant, bargain, sell and convey unto said _____, his heirs and assigns, all the following bounded and described real property, situate in the County of _____ and State of Oregon: _____ together with all and singular the tenements, hereditaments and appurtenances thereto belonging, or in any wise appertaining, and also all my estate, right, title and interest in and to the same, including dower and claim of dower.

To Have and to Hold the above described and granted premises unto the said _____, his heirs and assigns forever. And I, _____, the grantor above named, do covenant to and with _____, the above-named grantee, his heirs and assigns, that I am lawfully seized in fee simple of the above granted premises, that said premises are free from all incumbrances, and that I will, and my heirs, executors and administrators shall warrant and defend the above granted premises, and every part and parcel thereof, against the lawful claims and demands of all persons whomsoever.

In Witness Whereof, etc.

(165.)

Acknowledgment by Husband and Wife.

This certifies that on this _____ day of _____, A. D. 19____, before me the undersigned (*name and official title*), in and for said county and State, personally appeared the within named _____ and _____ his wife, to me personally known (*or satisfactorily proven to me on oath*) to be the identical individuals described in, and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily, for the uses and purposes therein expressed.

Requirements.

Deeds must be sealed (a scroll is sufficient). Two witnesses are necessary. Words of inheritance not required. Deed conveys all grantor's interest unless specially limited. Husband and wife join in each other's deeds to release dower or curtesy. The Torrens system of land-title registration and certification has been adopted.

PENNSYLVANIA.

(166.)

Warranty Deed.

This Indenture, Made the _____ day of _____, in the year of our Lord one thousand nine hundred and _____ between _____, of _____, and _____, his wife, parties of the first part, and _____, of _____, party of the second part, Witnesseth: that the said parties of the first part, for and in consideration of the sum of _____ dollars, lawful money of the United States of America, unto them well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents do grant, bargain, sell, aliene, enfeoff, release, convey and confirm unto the said _____ (*name of grantee*) his heirs and assigns, the following described parcel of land, that is to say, _____ (*here describe the premises granted.*)

Together with all and singular the buildings, improvements, ways, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, claim, and demand whatsoever of the said parties of the first part in law, equity or otherwise howsoever, of, in, and to the same and every part thereof.

To Have and to Hold the said _____ hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances _____ unto the said _____, his heirs and assigns, to and for the only proper use and behoof of the said _____, his heirs and assigns forever. And the said parties of the first part, their heirs, executors, and administrators, do by these presents, covenant, grant, and agree to and with the said _____ his heirs and assigns, that they, the said parties of the first part, and their heirs, all and singular the hereditaments and premises herein above described and granted, or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part, and their heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof, shall and will warrant and forever defend.

In Witness Whereof, etc.

STATE OF _____,
COUNTY OF _____, } ss.

On this _____ day of _____, A. D. 19____, before me, came the above named _____ and _____, and severally acknowledged the foregoing deed to be their act and deed, and desired the same to be recorded as such.

In Witness, etc.

(Official Character.)

My commission expires _____

Requirements.

The deed must be signed, sealed and acknowledged, and recorded in the county where the property is, within ninety days, except in Philadelphia where recording must be done at once. Deeds executed out of the State must be recorded within six months. Deeds subsequently recorded have priority only from date of record. One or more witnesses are usually taken, but are not required. A scroll answers for a seal. Husband must join in wife's deed, and she must join in his, to release dower. Separate examination of wife not now required.

THE PHILIPPINES.

(167.)

Warranty Deed.

I, _____, of _____, in the Province of _____, in the Philippine Islands, in consideration of _____ dollars to me paid by _____, of _____, do hereby sell and convey to the said _____ his heirs and assigns, that parcel of land, together with all the buildings and improvements thereon, situated in the municipality of _____ in the Province of _____ in the Philippine Islands, bounded and described as follows: _____ and the said _____ does hereby covenant and agree with the said _____ that he is lawfully seized in fee of said premises, that they are free from all incumbrances, that he has a perfect right to convey the same, and that he will warrant and forever defend the same unto the said _____ his heirs and assigns, against the lawful claims of all persons whomsoever.

In Witness, etc.

Signed in presence of _____

Requirements.

Two witnesses are necessary. No seal required. A system of land registration and certification has been adopted.

PORTO RICO.

Deeds are drawn and executed in accordance with the forms of the Spanish law. The deed is drawn up by a notary, who retains the original and issues a copy to the parties. It must recite how the title of the grantor was acquired, the date and place where passed, names and domicils of the parties, a description of the premises, and a full statement of the consideration. It must be executed in the presence of two witnesses, not related to the notary or to the parties, and recorded.

RHODE ISLAND.

(168.)

Warranty Deed.

To all People to Whom these Presents Shall Come, I, _____, (*name of grantor*), of _____ in the County of _____, in the State of _____,

send greetings. Know ye, that I, the said _____, hereinafter called the grantor, for and in consideration of the sum of _____ dollars, to me in hand before the ensealing hereof well and truly paid by _____, of _____, the receipt whereof I do hereby acknowledge, and am therewith fully satisfied and contented and paid, and thereof and of every part and parcel thereof do exonerate, acquit and discharge the said _____, his heirs, executors and administrators forever, by these presents have given, granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by these presents do freely, fully and absolutely give, grant, bargain, sell, aliene, enfeoff, convey and confirm unto the said _____, hereinafter called the grantee, his heirs and assigns forever, all that: _____.

To Have and to Hold the said granted and bargained premises, with all the appurtenances, privileges and commodities to the same belonging or in any wise appertaining, to the said grantee and his heirs and assigns forever. And I the said grantor, for myself and for my heirs, executors and administrators, do covenant with the said grantee, his heirs and assigns, that at and before the ensealing hereof I am the true, sole and lawful owner of the above bargained premises, and am lawfully seized and possessed of the same in my own proper right, as a good, perfect and absolute estate of inheritance, in fee simple, and have in myself good right, full power and lawful authority to grant, bargain, sell, convey and confirm the said bargained premises in manner aforesaid. And that the said grantee, his heirs and assigns, shall and may from time to time and at all times forever hereafter, by force and virtue of these presents, lawfully, peaceably and quietly have, hold, use, occupy, possess and enjoy the said demised and bargained premises with the appurtenances, free and clear, and freely and clearly acquitted, exonerated and discharged of and from all and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, wills, entails, jointures, dowries, judgments, executions and incumbrances of whatever name or nature soever that might in any measure or degree obstruct or make void this present deed. Furthermore I, the said grantor, for myself and for my heirs, executors and administrators, do covenant and engage the above demised premises to the said grantee, his heirs and assigns, against the lawful claims or demands of any person or persons whatsoever, forever, to warrant, secure and defend by these presents. And I, _____ wife of the said grantor, in consideration of the sum paid as aforesaid, do hereby release and forever quitclaim unto the said grantee, his heirs and assigns, all my right of dower in and to the aforegranted premises.

In Testimony Whereof, etc.

Signed, Sealed, and Delivered in the Presence of

STATE OF _____, }
COUNTY OF _____, } ss.

On this _____ day of _____ in the year _____ before me personally appeared _____ and _____ his wife, both known to me, and known by me to be the persons executing the foregoing instrument, and they severally acknowledged said instrument to be their free act and deed.

In Witness, etc.

Requirements.

The deed must be acknowledged and recorded in the office of the clerk or recorder of deeds of the town or city where the property is. Witnesses are not essential. Private seals are abolished. Husband and wife join to release dower or curtesy. Both acknowledge.

SOUTH CAROLINA.

(169.)

Warranty Deed.

THE STATE OF SOUTH CAROLINA.

Know all Men by these Presents, That I, A. B., of _____, in the State aforesaid, in consideration of the sum of _____ dollars to me in hand paid at and before the sealing of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto C. D., of _____ all that (*here describe the premises*) _____. Together with all and singular the rights, members, hereditaments, and appurtenances to the said premises belonging, or in any wise incident or appertaining.

To Have and to Hold all and singular the premises before mentioned unto the said C. D., his heirs and assigns forever. And I do hereby bind myself, my heirs, executors, and administrators, to warrant and forever defend all and singular the said premises unto the said C. D., his heirs and assigns, against myself and my heirs, and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness my hand and seal this _____ day of _____ in the year of our Lord _____ and in the _____ year of the independence of the United States of America.

(Signature.) [L.S.]

Signed, Sealed, and Delivered in the Presence of

THE STATE OF SOUTH CAROLINA,
_____ COUNTY.

Personally appeared before me (*name and title*) _____, and made oath that he saw the within named A. B. sign, seal, as his act and deed, and deliver the within written deed; and that he, with _____, witnessed the execution thereof.

Sworn to before me, this _____ day of _____, 19____.

(Signature.)

In South Carolina deeds are not acknowledged by the grantor in the usual way, but are proved for record by the affidavit of a subscribing witness as above.

Dower is released by acknowledgment before a notary public, or other official, as follows:

I, _____ (*name and title*), do hereby certify that _____ the wife of the within named _____ did this day appear before me, and, upon being

privately and separately examined by me, did declare that she does freely, voluntarily and without any compulsion, dread, or fear of any person or persons whomsoever, renounce, release, and forever relinquish unto the within named _____ his heirs and assigns, all her interest and estate, and also all her right and claim of dower of, in, or to all and singular the premises within mentioned and released (*signature of wife*).

Given under my hand and seal this _____ day of _____, A. D. 19____.

Requirements.

Deed requires a seal—a scroll is sufficient—and must be executed in presence of two or more witnesses. If recorded within ten days from date it is notice from its date; otherwise from date of record. Release of dower must be recorded within forty days.

SOUTH DAKOTA.

Forms of deeds and acknowledgments are substantially the same as those of North Dakota.

(170.)

Warranty Deed—Statutory Form.

_____, grantor, of _____, for and in consideration of _____ dollars, grants, conveys and warrants to _____, grantee, of _____, whose post-office address is _____, the following described real estate in the County of _____, and State of South Dakota, namely, (*description*.)

Dated the _____ day of _____, 19____.

Requirements.

Neither witnesses nor seals are required. Deed must contain post-office address of grantee. Husband and wife need not join except to release homestead, but usually do so.

TENNESSEE.

(171.)

For Form of Warranty Deed, see KANSAS.

Statutory Form.

I hereby convey to _____ the following tract of land, and I warrant the title against all persons whomsoever.

STATE OF _____, }
COUNTY OF _____, } ss.

Personally appeared before me (*name and title*) the within named grantor, with whom I am personally acquainted, and who acknowledged that he executed the within deed for the purpose therein contained.

And, _____, wife of the said _____, having appeared before me privily and apart from her husband, the said _____ acknowledged the

execution of the said deed to have been done by her, freely, voluntarily, and understandingly, without compulsion or constraint from her said husband, and for the purpose therein expressed.

Witness my hand and seal of office this _____ day of _____, A. D. 19____

Requirements.

Deeds must be acknowledged by the grantor, or proved by two witnesses. If acknowledged no witness is necessary. Seals are abolished. Husband and wife join to release dower or curtesy. Words of inheritance are unnecessary. Deed passes grantor's entire interest unless specially limited. A system of registering and issuing land titles has been adopted.

TEXAS.

(172.)

Warranty Deed.

STATE OF _____, }
COUNTY OF _____ } ss.

Know all Men by these Presents, That I, _____, of _____, in the County of _____, in the State of _____, for and in consideration of _____ dollars to me in hand paid by _____ the receipt of which is hereby acknowledged and confessed, have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said _____, of _____, in the County of _____, in the State of _____, all that certain *(description of premises)*.

To Have and to Hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said _____, his heirs or assigns, forever. And I do hereby bind myself, my heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said _____, his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

Witness My Hand, etc.

STATE OF _____, }
COUNTY OF _____ } ss.

Before me _____ (*name and character of office*) on this day personally appeared _____, known to me (*or proved to me on the oath of* _____) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, A. D. _____.

(173.)

Acknowledgment of Married Woman.

Before me _____ (*name, etc.*), on this day personally appeared _____, wife of _____, known to me (*or proved to me on the oath of* _____)

to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said _____ acknowledged said instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and did not wish to retract it.

Requirements.

Deed must be acknowledged, or proved by two witnesses. No seal is necessary. Husband must join in wife's deed. She need not join in his, except to convey homestead.

UTAH.

For Form of Deeds, see CALIFORNIA.

(174.)

Warranty Deed—Statutory Form.

A. B. grantor, of _____, hereby conveys and warrants to C. D., of _____, for the sum of _____ dollars, the following described tract of land in _____ County, Utah: (*description*).

Witness the hand of said grantor this _____ day of _____, A. D.

STATE OF _____,
COUNTY OF _____, } ss.

On this _____ day of _____, A. D. 19____, personally appeared before me (*name and official title*) _____, the signer of the above instrument (*or satisfactorily proved to me to be the signer of the above instrument by the oath of _____ a competent and credible witness for that purpose by me duly sworn*) and duly acknowledged to me that he executed the same.

In Witness, etc.

My commission expires _____

Requirements.

Neither witnesses nor seals necessary, but one witness usual. Wife should join in husband's deed, but she may convey without him.

VERMONT.

(175.)

Warranty Deed.

Know all Men by these Presents: That I, _____, of _____ in the County of _____, and State of _____, in consideration of _____ dollars paid to my full satisfaction by _____ of _____, by these presents do freely give, grant, sell, convey and confirm unto the said _____, and

his heirs and assigns, forever, a certain parcel of land in _____ described as follows, viz: To have and to hold said granted premises, with all the privileges and appurtenances thereof, to the said _____, his heirs and assigns, to their own use and behoof forever; and I, the said _____, for myself and my heirs, executors and administrators, do covenant with the said _____, his heirs and assigns, that until the ensembling of these presents I am the sole owner of said premises, and have good right and title to convey the same in manner aforesaid; that they are free from every incumbrance; and I hereby engage to warrant and defend the same against all lawful claims whatever.

In Witness Whereof, etc.

STATE OF _____,
COUNTY OF _____, } ss.

At _____ this _____ day of _____, A. D. 19____, _____ personally appeared and acknowledged this instrument by him sealed and subscribed to be his free act and deed _____ before me.

Requirements.

Deeds must be signed and sealed,—the letters L. S. are sufficient,—in the presence of two witnesses, acknowledged, and recorded in clerk's office of city or town where property is situated. Husband must join in conveyance of wife's real estate, she need not join in conveyance of his. There is no dower or curtesy.

VIRGINIA.

(176.)

Warranty Deed—Statutory Form.

This deed, Made this _____ day of _____, 19____, between _____ of _____ of the first part, and _____ of _____ of the second part, Witnesseth: that in consideration of the sum of _____ dollars, the said _____ doth grant unto the said _____, with general warranty, (or with special warranty) all that, etc., _____. The said _____ covenants that he hath the right to convey the said land to the grantee; that he has done no act to incumber the said land; that the grantee shall have possession of the said land, free from all incumbrances; and that he, the said party of the first part, will execute such further assurance of the said land as may be requisite.

Witness the following signature and seal.

STATE OF _____,
COUNTY OF _____, } ss.

I, _____ (name and official title) do certify that _____ whose name is signed to the writing above (or hereto annexed), bearing date the _____ day of _____ 19____, has acknowledged the same before me in my county and State aforesaid. Given under my hand and official seal this _____ day of _____ A. D. 19____.

Requirements.

A deed unless especially limited conveys grantor's entire interest. Conveyance "with general warranty" operates as a full warranty against all persons; "with special warranty," only against grantor and those claiming under him. Dower or curtesy and homestead released by joint deed of husband and wife. When deed is acknowledged, no witnesses required. A scroll answers for seal.

WASHINGTON.

(177.)

Warranty Deed.

This Indenture Witnesseth: that _____, of _____, party of the first part, for and in consideration of the sum of _____ dollars of the United States of America, to him in hand paid by _____, party of the second part, has granted, bargained and sold, and by these presents doth grant, bargain, sell and convey unto the said party of the second part and to his heirs and assigns, the following described premises, lying and being in the County of _____, State of Washington, to wit:

To Have and to Hold the said premises, with their appurtenances, unto the said party of the second part, his heirs and assigns, forever; and _____ the said party of the first part, doth hereby covenant to and with the said party of the second part, his heirs and assigns, that he is the owner in fee simple of said premises; that they are free from all incumbrances; and that he will warrant and defend the same from all lawful claims whatsoever.

Witness his hand, etc.

(178.)

Statutory Form.

The grantor, _____ of _____, for and in consideration of _____ in hand paid, conveys and warrants to _____ of _____, the following described real estate _____ viz: situate in the County of _____ State of Washington.

Dated this _____ day of _____, 19____

I, _____ (name and official title) do hereby certify that on this _____ day of _____, 19____, personally appeared before me _____, and _____, his wife, to me known to be the individuals described in and who executed the within instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned. Given under my hand and official seal this _____ day of _____, 19____.

Requirements.

Words of inheritance are unnecessary. No witnesses are required. The use of private seals is abolished. The Torrens system of land-title registration and certification has been adopted.

Deed of community property or homestead must be executed and acknowledged by husband and wife; otherwise neither need join in the other's deed.

WEST VIRGINIA.

For Forms of Deeds, and Acknowledgment, see VIRGINIA.

Requirements.

Deeds must be executed under seal or scroll, and acknowledged or proved by two witnesses. Witnesses are not required when deed is acknowledged. Husband and wife join in each other's deeds to release dower or curtesy.

WISCONSIN.

For Form of Deed, see ILLINOIS.

(179.)

Statutory Form.

_____ grantor, of _____, hereby conveys and warrants to _____ grantee, of _____, for the sum of _____ dollars, the following tract of land in _____ County and State of Wisconsin (*here describe premises*).

Witness the hand and seal of said grantor this _____ day of _____, 19____.

(180.)

Acknowledgment by Husband and Wife.

Personally came before me this _____ day of _____, 19____, the above (*or within*) named _____, and _____, his wife, to me known to be the persons who executed the foregoing (*or within*) instrument, and acknowledged the same.

Requirements.

Deeds must be signed and sealed in presence of two witnesses, acknowledged, and recorded. A scroll answers for a seal. Wife joins in husband's deed to release dower. She may convey as though unmarried.

WYOMING.

(181.)

Warranty Deed—Statutory Form.

A. B., of _____ grantor, for and in consideration of _____ in hand paid, conveys and warrants to C. D. of _____, grantee, the following described real estate (*description*) situate in the County of _____, State of Wyoming. (*And where the right of homestead is involved, add the following:*) Hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of said State.

Dated this _____ day of _____, 19____. In presence of _____

(182.)

Acknowledgment by Husband and Wife.

On this _____ day of _____, 19____, before me personally appeared A. B., and C. D., his wife, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

(*Where the right of homestead is released add*): including the release and waiver of the right of homestead, the said wife having been by me fully apprised of her right and the effect of signing and acknowledging the said instrument.

My term or commission expires _____

Requirements.

One witness required. Private seals, except of corporations, abolished. Neither husband or wife need join in the other's deed, except to release homestead.

GENERAL FORMS.

(183.)

Quitclaim Deed without any Warranty.

This Indenture, Made the _____ day of _____ in year one thousand nine hundred and _____ between _____ (*name, residence, and occupation of the grantor*) of the first part, and (*name, residence, and occupation of the grantee*) of the second part, Witnesseth: that the said party of the first part, for and in consideration of the sum of _____ lawful money of the United States of America, to him in hand paid, by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released, and quitclaimed, and by these presents does remise, release, and quitclaim, unto the said party of the second part, and to his heirs and assigns forever, all (*here describe the land or premises granted*).

Together with all and singular the tenements, hereditaments, and appurtenances thereto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and his heirs and assigns forever.

In Witness Whereof, The said party of the first part has hereunto set his hand and seal the day and year first above written.

(Signature.) (Seal.)

(184.)

Quitclaim Deed with Special Warranty.

Know all Men by these Presents, That I, _____, of _____ in consideration of _____ dollars to me paid by _____ of _____, the receipt whereof is hereby acknowledged, do hereby remise, release, and forever quitclaim unto the said _____ a certain parcel of land, etc.

To Have and to Hold the above released premises with the privileges and appurtenances thereto belonging, to the said _____ and his heirs and assigns, to their own use and behoof forever.

And I hereby, for myself and my heirs, executors and administrators, covenant with the said _____ and his heirs and assigns, that the released premises are free from all incumbrances made or suffered by me, and that I will, and my heirs, executors and administrators shall, warrant and defend the same against the lawful claims and demands of all persons claiming by, through or under me, but against none other.

And for the consideration aforesaid I, _____ wife of the said _____ hereby release to the said _____ and his heirs and assigns all right of and to both dower and homestead, and all rights by statute, and all rights whatever in said premises.

In Witness Whereof, etc.

(185.)

Separate Relinquishment of Homestead and Dower in Land to be Sold under Execution.

Know all Men by these Presents, That we _____ (*name and residence of the debtor*) and (*name of his wife*) wife of the said _____ of the County of _____ and State of _____, parties of the first part, for the sum of one dollar to us paid by _____ (*name of the purchaser*) of the County of _____ and State of _____ party of the second part, the receipt whereof is hereby acknowledged, do hereby agree and consent to let the said party of the second part levy and sell, under a certain execution, in favor of him, the said party of the second part, and against _____ (*name of the debtor, or the defendant in the suit in which the execution issued*) now in the hands of the sheriff of the County of _____ and State of _____ and dated the _____ day of _____ A. D. 19____, the following described tract of land, situated in the County of _____ and State of _____ to wit (*here describe the land or premises granted*), (and being the same land heretofore held, used, and occupied by the said parties of the first part, as a homestead) hereby waiving, releasing, relinquishing, and surrendering to and in favor of said party of the second part, under the said levy and sale on said execution, all the right, title, claim, interest, and benefit which we, the said parties of the first part, and each of us, have in and to said premises, by virtue of any and all homestead-exemption laws, now or heretofore in force in the State of _____, and more especially "An Act to exempt Homesteads from Sale on Execution," now in force in the State of _____.

Witness our hands and seals this the _____ day of _____, 19____
 _____ (Signature.) (Seal.)
 _____ (Signature.) (Seal.)

STATE OF _____,
COUNTY OF _____, } ss.

I, _____ a (official title) in and for said county, in the State aforesaid, do hereby certify that _____ personally known to me as the same person whose name is subscribed to the annexed instrument, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

And the said (*the name of the wife*) wife of the said _____ having been by me examined, separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, and she also by me being fully informed of her rights under the Homestead Laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal this _____ day of _____, A. D. 19____
(Signature.) (Seal.)

(186.)

Deed of a Corporation.

This Indenture, Made this _____ day of _____, A. D. 19____, by and between (name of the corporation), a corporation organized under the laws of the State of _____, and whose principal office is situated in _____, County of _____, and State of _____ party of the first part, and _____ (name and residence of the grantee), party of the second part, Witnesseth:—

That the said _____ (name of the corporation), party of the first part, in consideration of the sum of _____ dollars to it paid by the party of the second part, the receipt of which is hereby acknowledged, doth hereby grant, bargain, sell, and convey unto the said party of the second part all and singular the premises hereinafter described, to wit: (here insert location and description of the premises), together with all the privileges and appurtenances thereto belonging.

To Have and to Hold the said granted premises to him, the said party of the second part, and his heirs and assigns, to their own use and behoof forever.

(Here insert any covenant of warranty or other covenants which may be agreed upon between the parties, in the same form as in deeds between individuals.)

In Witness Whereof, the said (name of the corporation) has caused this instrument to be subscribed in its name by _____, its president (or other officer authorized to make the conveyance), thereunto duly authorized, and

its corporate seal to be hereunto affixed this _____ day and year first above written.

(*name of the corporation*)

by _____, its President (*or other officer.*)
(*corporate seal.*)

Witnesses

STATE OF _____,
COUNTY OF _____, } ss.

On this _____ day of _____, A. D. 19____, before me _____ a notary public (*or other official*), duly commissioned, and authorized to take acknowledgments of deeds in and for said county and State, personally appeared the above named _____, and acknowledged the foregoing instrument to be the free act and deed of the said (*name of the corporation*), for the uses and purposes therein set forth.

Witness my hand and notarial seal this _____ day of _____, A. D. 19____

(*Notarial seal.*)

Notary public (*or other official*).

If the deed is made in pursuance of a vote of the corporation, or of its board of directors or other governing body, a copy of such vote, certified by the recording officer of the corporation in substantially the following form, should be appended to the deed:

I, _____, secretary of the (*name of the corporation*), hereby certify that at a meeting of said corporation (*or of its board of directors, etc.*) held at _____ on the _____ day of 19____, duly certified and called in accordance with the By-Laws, a quorum being present, the following vote was passed.

"*Voted*—That _____, the president of the corporation, be authorized to execute, acknowledge, and deliver, in its name, and to seal with its corporate seal, a deed of the premises (*brief description, sufficient for identification*), to _____ in such form as he may deem proper."

A true copy from the records.

Attest.

Secretary.

It is well to add also an affidavit in substantially the following form, as in some States such affidavit is essential:

STATE OF _____,
COUNTY OF _____, } ss.

On this _____ day of _____, A. D. 19____, before me, _____ a notary public, duly commissioned in and for said county, and authorized by law to administer oaths and take acknowledgments of deeds, personally appeared the above named _____, who, being first duly sworn, doth depose and say, that he is the president (*or other official*) of the said (*name of the corporation*); that he is authorized to execute, acknowledge, and deliver deeds in the name of said corporation and on its behalf, that the said instrument was signed and sealed by him in behalf of said corporation, by its authority (*or by authority of its board of directors*), and that the seal affixed to said instrument is the corporate seal of the said (*name of the corporation*).

(*If the corporation has no seal, the affidavit should so recite.*)

In Witness Whereof I have hereunto set my hand and affixed my official seal, this _____ day of _____, A. D. 19____

(Seal)

_____,
Notary Public.

(187.)

Deed of Executor or Trustee under Power in a Will.

Know all Men by these Presents, That I, _____ of _____, in the County of _____ and State of _____, as I am Executor of (*or Trustee under*) the last will and testament of _____ deceased, late of _____ in the County of _____ and State of _____, which will was duly proved, allowed, and admitted to probate in the Probate Court for the County of _____ and State of _____, on the _____ day of _____, A. D. 19____, and my appointment as such executor (*or trustee*) duly confirmed by said court, do by virtue and in execution of the powers to me given in and by said will, and of every other power and authority me hereunto enabling, and in consideration of the sum of _____ dollars to me paid by _____ of _____ in the County of _____ and State of _____, the receipt of which is hereby acknowledged, give, grant, bargain, sell and convey to the said _____ the following described real estate situated in _____, in the County of _____ and State of _____, to wit: (*description*).

To Have and to Hold the afore-granted premises, with all the rights, privileges and appurtenances to the same belonging, or in any way appertaining, to the said _____, his heirs and assigns, to his and their use and behoof forever.

In Witness Whereof, I, the said _____, have hereunto set my hand and seal as such executor (*or trustee*) this _____ day of _____, A. D. 19____.

_____,
(Executor (*or Trustee*)).

_____, ss.

_____, A. D. 19____

Then personally appeared the above named _____, executor (*or trustee*) as aforesaid, and acknowledged the foregoing instrument to be his free act and deed, before me. _____,

(188.)

Deed of Executor by License of Court.

Know all Men by these Presents, That whereas _____ (*name of the executor*) in the County of _____ and State of _____, executor of the last will of _____, (*name of the testator*) late of _____ deceased, by an order of the Court of Probate, held at _____ within and for the County of _____ on the _____ day of _____ in the year one thousand nine hundred and _____ was licensed and empowered to sell and pass deeds to convey certain real estate of the said deceased; and whereas, I, _____ the said executor, having given public notice of the intended sale, by causing notifications thereof to be published once a week, for three successive weeks prior to the time of sale, in the newspaper called the _____ printed at _____ and having first taken the oath and given

the bond by law in such cases required, did on the _____ day of _____ in the year one thousand nine hundred and _____ pursuant to the order and notice aforesaid, sell by public auction the real estate of the said deceased hereinafter described, to (name, residence, and occupation of the purchaser) for the sum of _____ dollars, he being the highest bidder therefor.

Now, therefore, Know ye, That I, the said _____ executor as aforesaid, by virtue of the power and authority in me vested as aforesaid, and in consideration of the aforesaid sum of _____ dollars paid by the said _____ (name of the purchaser) the receipt whereof is hereby acknowledged, do, by these presents, give, grant, sell, and convey unto the said _____ (Here describe the land or premises granted, by metes and bounds, and contents or quantity, or boundary marks or monuments, and refer to the deed of the land to the testator, under which he held it).

To Have and to Hold the afore-granted premises, with all the privileges and appurtenances to the same belonging, to him the said _____ (name of purchaser) and his heirs and assigns, to his and their use and behoof forever. And I the said _____ (name of executor) for myself and my heirs, executors, and administrators, do hereby covenant with the said (name of purchaser) and his heirs and assigns, that in pursuance of the order aforesaid, I gave public notice of the said intended sale, in manner aforesaid, and that I took the oath and gave the bond by law required, previous to fixing on the time and place of sale.

In Witness Whereof, I, the said _____ executor as aforesaid, have hereunto set my hand and seal this _____ day of _____ in the year of our Lord one thousand nine hundred and ____.

(Signature.) (Seal.)

Signed, Sealed, and Delivered in the Presence of

Administrators and Guardians can convey lands only by license of the Probate Court. Their deeds are substantially the same in form as that above, substituting for "executor," etc., "administrator of the goods and estate of _____" or "guardian of _____ and _____, minor children of _____," as the case may be.

(189.)

Deed of Trustee in Bankruptcy.

This Indenture, Made this _____ day of _____, 19____, between _____, of _____, Trustee of the estate and effects of _____, late of _____, a bankrupt, of the first part; and _____ of _____, party of the second part, Witnesseth:

Whereas, a petition for adjudication in bankruptcy was on the _____ day of _____ filed in the District Court of the United States for the District of _____ against (or by) the said _____, who was thereupon on the _____ day of _____ 19____, adjudged a bankrupt; and the said party of the first part was duly chosen and appointed Trustee of the estate

and effects of said bankrupt, and qualified as such Trustee by giving bond as required by law on the day of _____ 19____

And Whereas, the parcel of land and premises hereinafter described, forming a part of the bankrupt's estate, were on the _____ day of _____ offered for sale at public auction by the said Trustee at _____, according to certain printed conditions of sale, at which sale the said _____ (grantee) being the highest bidder, was declared the purchaser of the said premises at the sum of _____ dollars.

(Or, if the premises were sold at private sale, substitute for the latter part of the last clause: "Have been by order of said court made the _____ day of _____ 19____, sold by private sale to the said party of the second part, for the sum of _____ dollars.")

Now this Indenture Witnesseth: that in consideration of the sum of _____ dollars paid by the said _____ to the said Trustee, the receipt whereof is hereby acknowledged, the said _____, Trustee as aforesaid, doth hereby remise, release and forever quitclaim unto the said _____ all that parcel of land, etc.

To Have and to Hold, etc. (as in previous deeds).

In Witness, etc.

(190.)

Deed of Referee on Foreclosure of Mortgage.

This Indenture, Made the _____ day of _____ in the year one thousand nine hundred and _____ between (name and residence of the referee and grantor), a referee duly appointed as hereinafter mentioned, of the first part, and (name, residence, and occupation of the grantee) of the second part.

Whereas, at a _____ Term of the (name of the court) court, on the _____ day of _____ one thousand nine hundred and _____ it was among other things ordered and adjudged by the said court, in a certain action then pending in the said court, between (names of plaintiff and defendant in the action):

That all and singular the mortgaged premises mentioned in the complaint in said action, and in said judgment described, or so much thereof as might be sufficient to raise the amount due to the plaintiff for principal, interest, and costs in said action, and which might be sold separately, without material injury to the parties interested, be sold at public auction, according to the course and practice of said court, by or under the direction of the said party of the first part as referee, thereby duly appointed for that purpose; that the said sale be made (here state the directions in the order of court as to the place and time of the sale); that the said referee give public notice of the time and place of such sale, according to the course and practice of said court, and that any of the parties in said action might become a purchaser or purchasers on such sale; that the said referee execute to the purchaser or purchasers of the said mortgaged premises, or such part or parts thereof as should be sold, a good and sufficient deed or deeds of conveyance for the same.

And Whereas, the said referee, in pursuance of the said judgment of the said court, did on the _____ day of _____ one thousand nine hundred and _____ sell at public auction at *(the place of sale)* the premises in the said judgment mentioned, due notice of the time and place of such sale being first given, agreeably to the said judgment; at which sale the premises hereinafter described were struck off to the said party of the second part for the sum of _____ dollars, that being the highest sum bidden for the same. Now this indenture witnesseth, that the said referee, the party of the first part to these presents, in order to carry into effect the sale so made by him as aforesaid, in pursuance of the judgment of said court, and in conformity to the statute in such case made and provided, and also in consideration of the premises, and of the said sum of money so bidden as aforesaid, being first duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth grant and convey unto the said party of the second part, the premises aforesaid, situate, bounded, and described as follows *(describe here the premises sold)*.

To Have and to Hold all and singular the premises above mentioned and described, and hereby conveyed, or intended so to be, unto the said party of the second part, his heirs and assigns, to and for his and their only proper use, benefit, and behoof.

In Witness Whereof, The said _____ referee as aforesaid, hath hereunto set his hand and seal, the day and year first above written.

(Signature.) (Seal.)

Sealed and Delivered in the Presence of

(191.)

Deed from Trustee under Trust Deed to Secure Payment of Notes.

This Deed, Made and entered into this _____ day of _____, A. D. nineteen hundred and _____ by and between _____ *(names of trustee)* party of the first part, and *(name, residence, and occupation of grantee)* party of the second part, Witnesseth: that whereas *(name of the party who conveyed the estate to the trustee)* by deed dated the _____ day of _____, 19____, recorded in the Recorder's office of _____ County, State of _____ in book _____ page _____, conveyed the property hereinafter described in trust to said *(name of trustee)* to secure the payment of certain promissory notes in said deed described, and whereas _____ *(here describe the non-payment or other default which has authorized the sale by the trustee)* and the party herein of the first part, at the request of the legal holder of said promissory notes acting in pursuance of the provisions of said deed of trust, and having first given _____ days' public notice of the time, terms, and place of sale, and of the property to be sold, by an advertisement inserted on the _____ day of _____, A. D. _____, in the _____ a daily newspaper printed in the city of _____ and continued to the day of sale (as will appear by the copy of said advertisement, and affidavit of publication thereof, hereto annexed as a part of this deed) did proceed to sell the property described in said deed at public

vendue to the highest bidder for cash at _____ in the city of _____ on _____ the _____ day of _____, 19____, between the hours of ten o'clock in the morning and five o'clock in the afternoon of said day, when and where the same was struck off to _____ (*the name of the purchaser who is the grantee*) as the highest and last bidder therefor, at the price and sum of _____ dollars, full payment whereof is hereby acknowledged; now, said party of the first part, by virtue of the proceedings aforesaid, and in consideration of the sum of _____ dollars to him in hand paid by said party of the second part, does by these presents bargain, sell, and convey to said _____ (*name of the grantee*) all the right, title, and interest which by virtue of said trust deed, and the proceedings aforesaid, he may or can bargain, convey, or sell, in and to the property described in said deed of trust, to wit (*here describe the land or premises granted in the same way in which they are described in the deed of trust under which the trustee acts*).

To Have and to Hold the said described premises unto said _____ (*name of the purchaser*) and unto his heirs and assigns forever.

In Witness Whereof, the said party of the first part has hereto set his hand and seal the day and year first herein above written.

(*Signature.*) (*Seal.*)

In Presence of

(192.)

Deed of Master in Chancery.

This Indenture, Made this _____ day of _____, A. D. 19____, between (*name of grantor*) Master in Chancery, in and for the County of _____ and State of _____, of the first part, and _____ (*name of grantee*) of the second part, Witnesseth: That whereas, at the _____ term of the _____ Court of the said County of _____ and State of _____, in the year of our Lord A. D. 19____, in a certain suit and proceedings in chancery, pending in said court, wherein _____ were complainants, and _____ were defendants, to obtain a decree for the sale of the property hereinafter described, and for other relief, it was ordered, adjudged, and decreed by the court, that (*here set forth the decree under which the sale is made*) and _____ Master in Chancery, in and for the County of _____ and State of _____ was appointed to execute the said decree, and to make, execute, and deliver to the complainants a deed to the said premises as aforesaid, conveying to _____ (*the name, residence, and occupation of the grantees*) all the interest and title of the defendant to said premises.

Now, therefore, Know all Men by this Deed, That I, _____ Master in Chancery as aforesaid, in consideration of one dollar to me paid by the said party of the second part, the receipt whereof I acknowledge before the execution hereof, and by virtue of the decree aforesaid, have granted, bargained, and sold, and do hereby grant, bargain, and sell unto the said party of the second part, his heirs and assigns forever, the following-described real estate, lying in the County of _____ and State of _____ to wit (*here describe the land or premises granted*).

To Have and to Hold the said premises, with all the appurtenances thereto belonging, unto the said party of the second part, his heirs and assigns forever.

In Testimony Whereof, I, the said _____ Master in Chancery, have hereto set my hand and seal the day and year first above written.

(Signature.) (Seal.)

In Presence of

(193.)

Sheriff's Deed on Execution in use in some Western States.

Whereas, (the name of the plaintiff in the suit in which the execution issued) did at the _____ term, A. D. nineteen hundred and _____ of the _____ court for the County of _____ in the State of _____, recover a judgment against (name of the defendant in that suit) for the sum of _____ and costs of suit, upon which judgment and execution was issued, dated on the _____ day of _____, A. D. nineteen hundred and _____ directed to the sheriff of _____ County, to execute, and by virtue of said execution _____ (name of the sheriff) of _____ then sheriff of said county, levied upon the lands hereinafter described, and the same were struck off and sold to (name of the purchaser at the sheriff's sale) he being the highest and best bidder therefor, and the time and place of the sale thereof having been duly advertised according to law.

And the said _____ (name of the purchaser) having duly assigned his certificate of purchase to _____ (name of the grantee).

Now therefore, Know all by this Deed, That I, _____ (name of the sheriff) sheriff of said County of _____ in consideration of the premises, have granted, bargained, and sold, and do hereby convey to the said (name of the grantee) his heirs and assigns, the following described tract of land, to wit (here describe the land or premises granted).

To Have and to Hold the said described premises, with all the appurtenances thereto belonging, to the said _____ (name of the grantee) and his heirs and assigns forever.

Witness my hand and seal this _____ day of _____ in the year of our Lord one thousand nine hundred and _____

(Signature.) (Seal.)

In Presence of

Sheriff of _____ County.

STATE OF _____,
COUNTY OF _____, } ss.

I, _____ clerk of the _____ court of _____ County, do certify that _____ sheriff of _____ County, personally known to me to be the real person whose name is subscribed to the within annexed deed, this day acknowledged before me that he executed the said deed, as such sheriff, voluntarily and freely, for the use and purposes therein set forth.

Given under my hand, and the seal of said court, this _____ day of _____, nineteen hundred and _____

(Signature.)

Clerk. (Seal.)

(194.)

Sheriff's Deed of an Equity of Redemption.

(MASSACHUSETTS FORM.)

Know All Men by these Presents, That whereas I, A. B. a deputy sheriff for the County of _____ in the Commonwealth of Massachusetts, having by virtue of a writ of execution which was issued upon a judgment recovered in the _____ Court for said County of _____, on the _____ day of _____, A. D. 19____, by V. W. against X. Y., seized and taken all the right which the said X. Y. had on the _____ day of _____, A. D. 19____, being the time when the same was attached on meane process (*or when the same was seized and taken as aforesaid*) of redeeming the mortgaged premises hereinafter described; and having given the notices of the time and place of sale and caused to be published the advertisements thereof required by law, did on the _____ day of _____, A. D. 19____, and in accordance with said notices and advertisements, make sale of the said right of redemption at public auction to C. D. of _____, for the sum of _____, which amount was bid by the said C. D. and was the highest bid made therefor at said auction.

Now Therefore, in consideration of said sum of _____ to me paid by the said C. D., the receipt of which I hereby acknowledge, I do, as deputy sheriff as aforesaid, hereby grant, bargain, sell and convey unto the said C. D. all the right which the said X. Y. had at the aforesaid time of attachment, (*or seizure*) of redeeming a certain parcel of land, etc. (*describing it*).

To Have and to Hold the granted premises, with all the privileges and appurtenances thereto belonging, to the said C. D. and his heirs and assigns to their own use and behoof forever, subject however to be redeemed agreeably to the law in such case made and provided.

And I hereby covenant with the said grantee and his heirs and assigns that in making the said sale, and in everything concerning the same, I have complied with and observed the rules and requirements of the law in relation thereto; but I do not covenant that the said X. Y. had any right, title or interest in the said estate at the time aforesaid.

In Witness Whereof, etc.

(195.)

Mortgagee's Deed under a Power of Sale.

This Indenture, Made this _____ day of _____ in the year of our Lord one thousand nine hundred and _____, between (*name and occupation of the mortgagee*) of the County of _____ and State of _____ party of the first part, and (*name and occupation of the grantee*) of the County of _____ and State of _____ of the second part.

Witnesseth: that whereas (*name and occupation of the owner and mortgagor who gave to the mortgagee the power now exercised*) of the County of _____ and State of _____ did, by a certain deed, dated the _____ day of _____ A. D. 19____, which deed is recorded in the Re-

_____ corder's office of the County of _____ in the State of _____ on the _____ day of _____, A. D. 19____, in book _____ of _____ at page _____, grant, sell, and convey to the said party of the first part all the premises hereinafter described, to secure the payment of a certain debt (or note, or bond) in said deed particularly mentioned, and upon certain terms in said deed particularly declared; and whereas default having been made in the payment of said debt (note or bond), the said premises were, by said party of the first part, duly advertised for public sale at the door of the court-house (or other place) in the County of _____ and State of _____ on the _____ day of _____ A. D. 19____, in the manner prescribed by said deed, and were, upon the day and year and at the place last mentioned aforesaid, in pursuance of said notice, sold at public sale, and at said sale the said party of the second part was the highest and best bidder therefor, and bid for the tract first hereinafter named, the sum of _____ dollars.

Now Therefore, These presents witness: that the said party of the first part, in pursuance of the power and authority in him vested in and by the said deed, and in consideration of the sum of _____ dollars, to the said party of the first part paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath released and quitclaimed, and doth hereby convey, remise, release, and quitclaim to the said party of the second part, his heirs and assigns forever, all the right, title, and interest, as well in law as in equity, which the said party of the first part hath acquired by virtue of the deed above mentioned of, in, and to all that certain tract, piece, or parcel of land situated in the (town or city) of _____ County of _____ and State of _____ and described as follows, to wit, (*here describe the premises*).

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversions, remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and any and every part thereof, with the appurtenances, which the said party of the first part acquired by virtue of said deed:

To Have and to Hold the aforesaid right, title, and interest of the said party of the first part, unto the said party of the second part, his heirs and assigns forever, as fully and absolutely as the said party of the first part can, by virtue of the power and authority in him by said deed vested, convey the same.

In Witness Whereof, The party of the first part hath hereto set his hand and seal the day and year first above written.

(Signature of seller.) (Seal.)

Signed, Sealed, and Delivered in the Presence of

(196.)

Deed under Power of Sale Mortgage.

(MASSACHUSETTS FORM.)

Whereas, _____, of _____, in the County of _____, and Commonwealth of Massachusetts, did by mortgage deed, dated _____ and recorded in _____ Registry of Deeds, book _____, page _____, convey the real estate hereinafter described, to _____, of _____, and whereas in and by said mortgage deed the grantees therein named, his executors, administrators, or assigns were authorized and empowered, upon any default in the performance or observance of the conditions of said mortgage, to sell the said premises, with all improvements that might be thereon, at public auction at _____ first publishing a notice, as therein required, and to convey the same by proper deed or deeds to the purchaser or purchasers absolutely and in fee simple; and whereas there has been such default, and notice has been published, and a sale has been made, as will more particularly appear in and by the affidavit hereto subjoined:

Now therefore Know all Men, That I, the said _____ (*mortgagee*), by virtue and in execution of the power contained in said mortgage deed as aforesaid, and of every other power me hereto enabling, and in consideration of the sum of _____ dollars to me paid by _____, of _____, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey unto the said _____, his heirs and assigns forever, all and singular the premises conveyed by the aforesaid mortgage deed, namely: (*description as in mortgage deed*).

To Have and to Hold the same to the said _____ and his heirs and assigns, to their own use and behoof forever.

In Witness Whereof, I the said _____ hereunto set my hand and seal this _____ day of _____, in the year one thousand nine hundred and _____

Signed and Sealed in the Presence of

COMMONWEALTH OF MASSACHUSETTS.

County of _____

_____ ss.

_____, 19____

Then personally appeared the above named _____ and acknowledged the foregoing instrument to be _____ free act and deed; before me,
(*Justice of the Peace.*)

AFFIDAVIT.

I, _____, the mortgagee named in the foregoing deed, on oath depose and say that default has been made in the payment of the (*principal or interest, or both*), mentioned in the condition of the mortgage deed above referred to, the said (*principal or etc.*), when it became payable, not having been at that time, or at any other time, paid or tendered to any person authorized to receive the same; and that, pursuant to the provisions of said mortgage and to the requirements of the statutes of the Commonwealth of Massachusetts, I published once a week for three successive weeks, to

wit: on the (*dates of publication*), in the (*name of newspaper*), a newspaper published in _____ aforesaid, a notice of which the following is a true copy (*paste here a copy of the notice cut from the newspaper*).

And I further depose and say that pursuant to said notice, and at the time and place therein appointed, on the premises, while the said default continued, I sold the premises conveyed by said mortgage deed at public auction, by _____, a duly licensed auctioneer, to _____ named in the foregoing deed, for the sum of _____ dollars, which amount was bid by the said _____ and was the highest bid made therefor at said auction, and I have this day delivered to said _____ the foregoing deed of said mortgaged premises.

Witness my hand this _____ day of _____, A. D. 19____.

(*Signature.*)

COMMONWEALTH OF MASSACHUSETTS.

_____ ss.

_____, 19____

Then personally appeared the above named _____ and made oath that the foregoing statement by _____ subscribed is true; before me,

(*Justice of the Peace.*)

(197.)

Deed of Mining Claim.

This Indenture, Made the _____ day of _____, in the year of our Lord one thousand nine hundred and _____, between _____ (*name, residence and occupation of grantor*), the party of the first part, and _____ (*name, etc., of grantee*), party of the second part, Witnesseth: that the said party of the first part, for and in consideration of the sum of _____ dollars of the United States of America, to him in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, have granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents do grant, bargain, sell, remise, release, and forever quitclaim unto the said party of the second part and to _____ heirs and assigns (*here describe the land or premises granted*).

Together with all the dips, spurs, and angles, and also all the metals, ores, gold, and silver-bearing quartz rock, and earth therein; and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances thereto belonging, or in any wise appertaining, and the rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part; of, in, or to the said premises, and every part and parcel thereof, with the appurtenances.

To Have and to Hold all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, _____ heirs and assigns forever.

In Witness Whereof, etc.

(198.)

Trust Deed for the Benefit of a Wife, or some other Person.

This Deed, Made and entered into this _____ day of _____ nineteen hundred and _____ by and between (*name, residence, and occupation of the grantor*) party of the first part, and _____ (*name, residence, and occupation of the trustee*) party of the second part, and _____ (*name of the wife or any person who is to have the benefit of the trust*) party of the third part, Witnesseth: That the said party of the first part, in consideration of the sum of _____ dollars, to him in hand paid by the said party of the third part, the receipt of which is hereby acknowledged, and the further sum of one dollar, to him paid by the said party of the second part, the receipt of which is hereby also acknowledged, doth, by these presents, give, grant, sell, transfer, convey, and assign unto the said party of the second part, the following described tract or parcel of land, that is to say (*here describe the premises*).

To Have and to Hold the Same, With all the rights, privileges, and appurtenances thereto belonging, or in any wise appertaining, unto him, the said party of the second part, his heirs and assigns forever: In trust, however, to and for the sole and separate use, benefit, and behoof of _____ wife of (*or the name of the son or daughter, or any other person, may be substituted for that of the wife*) and the said party of the second part hereby covenants and agrees to and with the said _____ the party of the third part, that he will suffer and permit her (*or him*), without let or molestation, to have, hold, use, occupy, and enjoy the aforesaid premises, with all the rents, issues, profits, and proceeds arising therefrom, whether from sale or lease for her own sole use and benefit, separate and apart from her said husband, and wholly free from his control and interference, debts and liabilities, curtesy, and all other interests whatsoever; and that he will at any and all times hereafter, at the request and direction of the said _____ (*name of the party of the third part*) expressed in writing, signed by her (*or him*) or by her (*or his*) authority, bargain, sell, mortgage, convey, lease, rent, convey by deed of trust for any purpose, or otherwise dispose of said premises, or any part thereof, to do which full power is hereby given, and will pay over the rents, issues, profits, and proceeds thereof to the said party of the third part, and that he will, at the death of the said party of the third part, convey or dispose of the said premises, or such part thereof as may then be held by him under this deed, and all profits and proceeds thereof, in such manner, to such person or persons, and at such time or times, as the said party of the third part shall, by her (*or his*) last will and testament, or any other writing signed by her, or by her authority, direct or appoint; and in default of such appointment, that he will convey such premises to (*here state what it is intended shall be done with the property at the death of the party of the third part if he or she die intestate*). And the said party of the third part shall have power at any time hereafter, whenever she (*or he*) shall from any cause deem it necessary or expedient, by an instrument in writing under her (*or his*) hand and seal, and by her (*or him*) acknowledged, to nominate

and appoint a trustee or trustees, in the place and stead of the party of the second part above named; which trustee or trustees, or the survivor of them, or the heirs of such survivor, shall hold the said real estate upon the same trust as above recited; and upon the nomination and appointment of such new trustees, the estate in trust hereby vested in said party of the second part shall thereby be fully transferred and vested in the trustee or trustees so appointed by the said party of the third part. And said party of the first part hereby covenants to warrant and defend the title to the said real estate against the lawful claims of all persons whosoever, to the said parties of the second and third parts, their heirs and assigns. And the said party of the second part covenants faithfully to perform and fulfill the trust herein created.

In Testimony Whereof, etc.

(Signatures.) (Seals.)

(198a.)

Deed of Gift.

Know all Men by these Presents, That I, _____ of _____, in consideration of the love and affection which I bear to _____, of _____, and in further consideration of the sum of one dollar to me paid by the said _____, the receipt of which is hereby acknowledged, do hereby give, grant, bargain, sell and convey to the said _____, a certain parcel of land with the buildings thereon situated, in _____, in the County of _____, and State of _____, and bounded and described as follows, viz:
To Have and to Hold, etc. *(Continue as in the usual form of deed.)*

(199.)

Acknowledgment of Grantor and Wife Identified, before Commissioner for another State.

STATE OF _____,
COUNTY OF _____, } ss.

Be it Remembered, That on the _____ day of _____, one thousand nine hundred and _____, before me, _____, commissioner for the State of *(name of the State of which he is a commissioner)* resident in the _____ of _____, duly appointed, commissioned, and sworn to take acknowledgments and proof of deeds and other writings in the State of _____, to be used or recorded in the said State of *(name of the State of which he is commissioner)* and to administer oaths and affirmations, and to take depositions in said State of _____, to be used within the said State of _____, appeared *(name of grantor)* and *(name of wife of grantor)* his wife, who are satisfactorily proven to me to be the individuals described in, and who executed the within deed, from said *(name of grantor)* and wife to *(name of grantee)* by the oath of *(witnesses to their identity)*, who being by me duly cautioned and sworn, deposed that he knew them, the individuals, then present, to be the persons described in, and who executed the within deed *(or, "both of whom are personally known to me to be the persons," etc.)*. The said _____ and _____ his wife, then and there acknowledged to

me that they executed the said deed for the purposes therein mentioned; and the said (*name of the wife*) being examined by me privily, and apart from her said husband, and the contents and effect of the said deed being by me first duly explained to her, did then and there acknowledge that she executed the same for the purposes therein mentioned, freely and without compulsion of or from her said husband.

In Witness Whereof, I have hereunto set my hand and affixed the seal of my office, on the _____ day of _____ in the year of our Lord one thousand nine hundred and _____

(*Signature.*) (*Seal.*)

DOMINION OF CANADA.

The two Canadas were separated as to civil rights in 1791, and the French laws were allowed to remain in force in Lower Canada while the civil laws of England were declared to be in force in Upper Canada. Now both of these provinces, and with them nearly all the other British provinces in North America, are consolidated into the Dominion of Canada. But the same distinction of law continues to a considerable extent. In the Province of Quebec, formerly Lower Canada, the principles, forms, and usages of the French law prevail largely; while, in the other provinces, the common law of England prevails, as in the United States generally, and the forms and usages are substantially similar in all of them. Forms of conveyancing in these latter provinces have been greatly simplified by recent statutes. Short forms have been substituted for those formerly in use, and in several of the provinces the Torrens system of registration and transfer has been adopted.

We give forms of deeds, mortgages, and leases, from different provinces, which we believe will suffice for practice generally throughout the Dominion. There are certain provisions, which, though not universal, are prevalent, and would always be safe and prudent. Deeds conveying land are now almost universally registered, and there should be a subscribing witness, who declares in an affidavit his name, residence, and occupation, and makes oath: 1. To the execution of the original, and of the duplicate, if there be one. 2. To the place and date of execution. 3. That he knew the parties to the instrument, or one or more of them, as the case may be. If the deed be made in Quebec, it should be executed before a judge, or prothonotary, or the clerk of the Circuit Court, or a commissioner empowered to take affidavits, or a notary public.

DEEDS CONVEYING LAND.

PROVINCE OF ALBERTA.

The Torrens system of land titles prevails, under which the following forms of transfer and proof are used:

(199a.)

I, A. B. (*address and occupation*), being registered owner of an estate in fee simple, subject, however, to such incumbrances, liens and interests as are notified by memorandum underwritten (*or indorsed hereon*), in all that certain tract of land situate in the Province of Alberta, being composed of (*here state description of property transferred*), do hereby, in consideration of the sum of _____ dollars paid to me by C. D. (*address and occupation*), the receipt of which sum I hereby acknowledge, transfer to the said C. D. all my estate and interest in the said piece of land.

In Witness Whereof, I have hereunto set my hand and seal this _____ day of _____, A. D. 19____

Signed by the said A. B. in the presence of

There must be annexed to the transfer, affidavits of grantor and grantee of value of land, buildings, etc.

CANADA,

PROVINCE OF _____,

To wit:

I, (*full name, address and occupation of the witness*), make oath and say:

1. That I was personally present and did see _____ named in the within instrument, who is personally known to me to be the person named therein, duly sign, seal, and execute the same, for the purposes named therein. 2. That the same was executed at _____ and that I am the subscribing witness thereto. 3. That I know the said _____ and he is in my belief of the full age of twenty-one years.

Sworn to before me at _____ this _____ day of _____, 19____

Requirements.

Transfer must be executed in the presence of one witness, whose affidavit taken as above before a notary public or other official is required before registration.

BRITISH COLUMBIA.

(200.)

Statutory Form.

This Indenture, Made in duplicate the _____ day of _____ in the year of our Lord _____ in pursuance of the Real Property Conveyance Act between _____ of _____, grantor, and _____ of _____, grantee,

Witnesseth: that in consideration of the sum of _____, lawful money of Canada now paid by said grantee to said grantor, the receipt of which is hereby acknowledged, the said grantor doth grant unto said grantee, and his heirs and assigns forever, all and singular that certain parcel of land and premises situate, lying and being, etc., _____ together with all build-

ings, fixtures, commons, ways, profits, privileges, rights, easements and appurtenances to said hereditaments belonging, or with the same or any part thereof held or enjoyed or appurtenant thereto; and the estate, rights, title, interest and property, claims and demand of him the said grantor in, to, or upon the said premises.

To Have and to Hold unto the said grantee and his heirs and assigns, to his and their sole and only use forever; subject nevertheless to the reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown.

The said grantor covenants with the said grantee that he has the right to convey said land to said grantee notwithstanding any act of said grantor, and that said grantee shall have quiet possession of said land free from all incumbrances; and said grantor covenants with said grantee that he will execute such further assurances of said lands as may be requisite; and said grantor covenants with said grantee that he has done no act to incumber said land; and said grantor releases to said grantee all his claims upon said lands.

In Witness Whereof, etc.

(201.)

Certificate of Acknowledgment.

I hereby certify that _____, personally known to me (*or proved by the evidence on oath of _____*), appeared before me and acknowledged to me that he is the person mentioned in the annexed instrument, as the maker thereof, and whose name is subscribed thereto as party, that he knows the contents thereof, and that he executed the same voluntarily, and is of the full age of twenty-one years.

In Testimony Whereof, I have hereunto set my hand and seal of office at _____ this _____ day of _____, in the year of our Lord one thousand nine hundred and _____.

(202.)

Certificate for Married Woman.

I hereby certify that _____, personally known to me to be the wife of _____, appeared before me, and being first made acquainted with the contents of the annexed instrument, and the nature and effect thereof, acknowledged on examination, and apart from and out of hearing of her said husband, that she is the person mentioned in such instrument as the maker thereof, and whose name is subscribed thereto as party, that she knows the contents and understands the nature and effect thereof, that she executed the same voluntarily, without fear or compulsion or undue influence of her said husband, that she is of full age and competent understanding, and does not wish to retract the execution of the said instrument.

Requirements.

Deeds should be under seal and must be attested by one witness. There is neither dower nor curtesy in lands conveyed in lifetime of husband or wife.

PROVINCE OF MANITOBA.

For Forms of deeds and proof required for registration, see ONTARIO.

The Torrens system of land titles is also in force in Manitoba. The form of transfer and proof for registration of lands registered under this system are substantially the same as those of the Province of Alberta. There is neither dower nor curtesy in this Province.

PROVINCE OF NEW BRUNSWICK.

(203.)

Warranty Deed.

This Indenture, Made this _____ day of _____, A. D. 19____, between _____, of _____, hereinafter called the grantor, of the one part; and _____ of _____, hereinafter called the grantee, of the other part; Witnesseth that the grantor, in consideration of _____ dollars to him paid by the grantee, doth hereby grant, bargain and sell unto the grantee, his heirs and assigns, all (*description of premises*), together with all appurtenances thereto, and all interest therein of the grantor.

To Have and to Hold the same unto the grantee and his heirs and assigns, to the use of the grantee and his heirs and assigns forever. And the said grantor, for himself and his heirs, executors and administrators, doth covenant to and with the said grantee, his heirs and assigns, that he is lawfully seized of the before granted and bargained premises, and has good right to bargain and sell the same in manner and form as before written, and that he will warrant and forever defend the same against the lawful claims and demands of all persons whomsoever.

In Witness Whereof, the grantor has hereunto set his hand and seal the day and year first above written.

Signed, Sealed, and Delivered in Presence of

PROVINCE OF NEW BRUNSWICK, } ss.
COUNTY OF _____

Be it Remembered, That on the _____ day of _____ in the year of our Lord one thousand nine hundred and _____ before me (*name and official title*) personally came and appeared _____ the grantor within named, and acknowledged that he executed the foregoing deed freely and voluntarily for the uses and purposes therein contained.

And the said _____ wife of the said _____ having been by me examined separate and apart from her said husband, acknowledged that she executed the same freely and voluntarily, without any fear, threat or compulsion of, from, or by her said husband.

Requirements.

Deeds must be under seal, acknowledged, or proved by the oath of a subscribing witness and registered. Dower and curtesy as at common law, but no dower in wild or timber lands.

COLONY OF NEWFOUNDLAND.

(204.)

Deed.

This Indenture, Made the _____ day of _____, 19____, between _____, of _____, hereinafter called the vendór, of the one part, and _____, of _____, hereinafter called the purchaser, of the other part.

Witnesseth: That in consideration of the sum of _____ paid by the purchaser to the vendor, the receipt whereof is hereby acknowledged, the vendor as beneficial owner hereby grants to the purchaser all that (*description of premises*). To hold unto the purchaser, his heirs and assigns.

In Witness Whereof, etc.

Signed, Sealed, and Delivered in Presence of

Requirements.

Deeds must be acknowledged under oath by all granting parties, or proved on the oath of a subscribing witness. There is no right of dower.

PROVINCE OF NOVA SCOTIA.

For Statutory Short Form of Deed, see ONTARIO.

Requirements.

Deeds may be proved for record by the acknowledgment under oath by the grantor of the execution thereof, or by the oath of a subscribing witness that the parties executed the same in his presence. Deeds and leases for more than three years, must be registered. A married woman must acknowledge separate and apart from her husband that the deed is her free act and deed, and was executed freely and voluntarily without fear, threat or compulsion of, from, or by her husband.

Dower as at common law, except in unimproved lands; but no curtesy.

PROVINCE OF ONTARIO.

(205.)

Warranty Deed with Release of Dower.

This Indenture, Made (*in duplicate*) the _____ day of _____ one thousand nine hundred and _____, in pursuance of the Short Forms of Conveyances Act between _____ (*name, residence and occupation of grantor*) hereinafter called the grantor, together with _____ his wife, and _____ (*name, residence and occupation of grantee*) hereinafter called the grantee,

Witnesseth, That in consideration of _____ dollars of lawful money of Canada, now paid by the said grantee to the said grantor (the receipt whereof is hereby by him acknowledged), he the said grantor doth grant unto the said grantee, his heirs and assigns forever, in fee simple, all and singular that certain parcel of tract of land and premises situate, lying, and being (*here insert the description of the premises conveyed*).

To Have and to Hold unto the said grantee, his heirs and assigns, to and for his and their sole and only use forever; subject, nevertheless, to the reservations, limitations, provisos, and conditions expressed in the original grant thereof from the Crown.

The said grantor covenants with the said grantee that he has the right to convey the said lands to the said grantee notwithstanding any act of the said grantor.

And that the said grantee shall have quiet possession of the said lands, free from all incumbrances.

And the said grantor covenants with the said grantee that he will execute such further assurances of the said lands as may be requisite.

And the said grantor covenants with the said grantee that he has done no act to encumber the said lands.

And the said grantor releases to the said grantee all his claims upon said lands.

And _____, wife of the said grantor, hereby bars her dower in the said lands.

In Witness Whereof, The said parties hereto have hereunto set their hands and seals.

Signed, Sealed, and Delivered in the Presence of

COUNTY OF _____ to wit:

I, _____, of the _____, in the County of _____, make oath and say: 1. That I was personally present and did see the within instrument and duplicate thereof duly signed, sealed, and executed by all the parties thereto. 2. That the said instrument and duplicate were executed at _____. 3. That I, _____ know the said parties. 4. That I am a subscribing witness to the said instrument and duplicate.

Sworn before me at _____, in the County of _____, this _____ day of _____ in the year of our Lord, 19____

A Commissioner for taking Affidavits, etc. (or Notary Public.)

Requirements.

To entitle a deed to registration in Ontario, it must be proved by the affidavit of the subscribing witness as above, and not by acknowledgment. Dower and curtesy as at common law. Wife joins in husband's deed, but no acknowledgment or separate examination necessary. Deed must be under seal and attested by at least one witness. Titles to land are also registered and transferred under the Torrens system.

PROVINCE OF PRINCE EDWARD ISLAND.

Deeds under the "Short Form of Conveyances Acts," substantially the same as in Ontario.

Requirements.

They must be under seal—a scroll is not sufficient—and be attested by one witness. Wife must join in husband's deed to release dower, but she may convey without her husband.

PROVINCE OF QUEBEC.

(206.)

Warranty Deed.

On This Day, the _____ day of _____ in the year of our Lord one thousand nine hundred and _____ before the undersigned public notary, duly commissioned and sworn, in and for the heretofore Province of Lower Canada, now the Province of Quebec, in the Dominion of Canada, residing in the city of Montreal, in the said Province, personally appeared (*name, residence, and occupation of the grantor or grantors*) who acknowledged and confessed to have bargained, sold, assigned, transferred, and made over, and by these presents do bargain, sell, assign, transfer, and make over, from henceforth and forever, with promise of warranty against all gifts, dowers, mortgages, substitutions, alienations, and other hindrances whatsoever, to (*name, residence, and occupation of the grantee or grantees*) party to these presents, and accepting thereof, for his heirs and assigns, (*the description of the premises conveyed*) with all and every the members and appurtenances thereunto belonging, of all which the said purchaser declares himself to have a perfect knowledge, as having seen and viewed the same, and therewith is content and satisfied. Which said vendor is lawfully seized thereof, by virtue of a good and sufficient title, the same having been acquired (*here give a brief but accurate account or abstract of the title*).

To Have, Hold, Use, and Enjoy the aforesaid bargained and sold lot of land and premises, with their rights, members, and appurtenances, unto the said _____, his heirs and assigns, as their own proper freehold forever, by virtue of these presents, to enter upon and take possession of the aforesaid lot of land and premises. The present bargain and sale is made in manner as aforesaid, for and in consideration of the sum of _____.

And in consideration of the premises, the said vendor doth hereby transfer and set over to the said purchaser all right of property, claim, title, interest, demand, seizin, possession, and other rights whatsoever, which the said vendor can have, demand, or pretend in or upon the aforesaid hereby bargained and sold lot, piece, or parcel of land and premises, of which he hereby divests himself in favor of the said purchaser, his heirs and assigns, consenting and agreeing that the said purchaser be and remain seized and invested with the full and entire possession thereof, and for that purpose, doth hereby constitute the bearer of these presents attorney, to whom he gives all necessary power and authority to that effect, (*For thus, etc.*).

And at the making and passing of these presents also personally appeared and intervened Dame _____, wife of the said _____, by her said husband duly and specially authorized for all and every the effects and purposes hereof; who, after having had and taken communication of the foregoing deed of sale, declared to have renounced, as by these presents she doth, as well in her own name and behalf, as for and in the name and on behalf of her child or children, born or to be born, issue of her marriage

with the said _____, renounce, to all dower and all right and title of dower, *soit coutumier ou préfix*, which she, the said _____ might or of right ought to have or claim in or upon the above-described and hereby bargained and sold lot, piece, or parcel of land and premises, of which she hereby divests herself and her said children, 'declaring the said property and every part thereof hereby freed, cleared, and discharged of and from all her said rights of dower, and all other her matrimonial rights and claims, whether legal, stipulated, or customary.

And for the execution of these presents, and of every the premises, the said parties have elected their domicile at the place above mentioned. *Where, etc.—Notwithstanding, etc.—Promising, etc.—Obliging, etc.—Renouncing, etc.*

Done and Passed at the said city of Montreal, in the office of _____ the said Notary, on the day, month, and year first before written, in the _____ noon, and signed by the said _____ with, and in the presence of said Notary, also hereunto subscribing, these presents having been first duly read and executed under the number _____ thousand _____ hundred and _____

Requirements.

Deeds passed in the Province must be executed before a notary public, who retains the original and issues copies to the parties. Deeds made out of the Province are valid if executed according to the laws of the place where they are passed. Such deeds must be executed in the presence of two or more witnesses, one of whom must execute an affidavit, as follows:

I, _____, of _____, being duly sworn, do depose and say: I was present and did see _____ of _____ to me personally known to be the person described in and who executed the within deed, sign and execute the same. The signature is in the handwriting of the said _____ and was subscribed to the within deed in my presence and that of the other subscribing witness.

And I have signed.

Sworn to before me at _____ this _____ day of _____, one thousand nine hundred and _____.

Such affidavits may be made in a foreign country before a British minister, *chargé d'affaires* or consul.

Wife cannot convey without authorization from husband. She joins in his deed to release dower.

PROVINCE OF SASKATCHEWAN.

The Torrens system of land title prevails, and the forms of transfer and acknowledgment are substantially the same as those of Alberta.

Requirements.

Wife must join in husband's deed to release homestead. She must sign and acknowledge before district court judge or registrar, and be examined separate and apart from her husband.

CHAPTER XXXI.

MORTGAGES OF LAND.

THE purpose of a mortgage is to give to a creditor the security of property. It is very similar to a pledge, although not the same thing.

Mortgages are now made of personal property, as well as of real property; but we shall consider in this chapter a mortgage of real property; or, as it is usually called, a mortgage deed.

This is a deed conveying the land to the creditor as fully, and in precisely the same way, as if it were sold to him outright; but with an addition. This consists of a clause inserted before the clause of execution, to the effect that if the grantor (the mortgagor) shall pay to the grantee (the mortgagee) a certain amount of money at a certain time, then the deed shall be void. It is usually expressed in words substantially like these:

"Provided, nevertheless, that if the said A B (the grantor), his heirs, executors, or administrators, shall pay to the said C D (the grantee), his executors, administrators, or assigns, the sum of \$ ——— with interest (semi-annually, or otherwise as agreed on), on or before the ——— day of ———, then this deed, and also a certain promissory note signed by said A B, whereby said A B promises to pay said C D, or his order, the said sum at the said time, shall both be void; and otherwise shall remain in full force."

In some States it is more frequent to make a bond, instead of a note, to be secured by the mortgage; and the proviso should be altered accordingly; and it should also be made to express any other terms agreed on. Some of these will be spoken of presently.

In law, everything is a mortgage which consists of a valid conveyance, and a promise, or agreement, which may be on the same or on a different piece of paper or instrument, providing that the conveyance shall be void when a certain debt is paid, or the act performed for which the mortgage is security.

The mortgagee has now a title to the land; but it is subject to avoidance by payment of the debt. Until such payment, the land is his; and all the mortgagor owns in relation to it is a

right to pay the debt and redeem the land. Hence, a mortgagee has instantly as good a right to take possession of the land as if he were an outright purchaser, unless, as is now common, the deed provides that the mortgagor may retain possession.

Formerly, a mortgagor had a right to redeem his land only before or when the debt became due; for if he did not pay the money when it was due, he had no further right. But courts of equity, deeming this too hard, allowed him a further time to redeem it. And courts of law adopted the same rule, which is also contained in the statutes of all our States. This right to redeem is called a right in equity to redeem, or, more briefly and commonly, an equity of redemption; which all courts now regard and protect. The mortgagor may sell this equity of redemption, or he may mortgage it by making a second or other subsequent mortgage of the land, and it may be attached by creditors, and would go to assignees as a part of his property if he became insolvent. The time within which a mortgagor may thus redeem his land is usually three years.

The law regards this equity as so important that it will not permit a party to lose it even by his own agreement. Thus, if a mortgagor agrees with the mortgagee, in the most positive terms, or in any way he can contrive, or for any consideration, that he shall have no equity of redemption, and that the mortgagee may have possession and absolute title as soon as the debt is due and unpaid, the law sets aside every such agreement, and gives the debtor his equity of redemption.

Within a few years, however, a way has been found to effect this purpose indirectly, which the law sanctions. Many persons object to lending their money on mortgage, because they will have to wait three years after the debt is due before the land can be certainly theirs. But it is now quite common for the mortgage deed to contain an agreement of the parties, that, if the money is not paid when it is due, the mortgagee may, in a certain number of days thereafter, sell the land (providing also such precautions to secure a fair price as may be agreed on), and, reserving enough to pay his debt and charges, pay over the balance to the mortgagor. This is called a power of sale mortgage.

The time for redemption does not begin from the day when the debt is due and unpaid, unless the mortgagee then enters and takes possession for the purpose of *foreclosing* the mortgage, as

the legal phrase is; by which phrase is meant extinguishing the equity of redemption. If the debt has been due a dozen years, the mortgagor may still redeem, unless the mortgagee has entered to *foreclose*, and the time for redemption has elapsed since the entry.

He may make entry for this purpose in a peaceable manner, before witnesses, as pointed out in the statutes regulating mortgages, or by an action at law.

If, after such entry, the mortgagor redeems, he must tender the debt, with interest, and the lawful costs and charges of the mortgagee; but he will be allowed such rents and profits as the mortgagee has actually received, or would have received but for his own fault.

This process of foreclosure, by entry on the land and lapse of time, (called a "strict foreclosure"), which results in the mortgagee's obtaining an absolute title to the land without regard to the amount of the mortgage debt, is now seldom employed. Besides the use of the power of sale mortgages above described, which has now become very general, it is provided by statute in many of the States that mortgages shall be foreclosed by action at law or suit in equity, in which the property is sold under the direction of the court, and the mortgage debt paid out of the proceeds. In some States even after sale further time is allowed for redemption. An abstract of the laws of the several States on this subject will be found at the close of this chapter.

In some States deeds of trust are commonly used instead of mortgages. In these the property is conveyed to a trustee, who is empowered, on any default by the borrower, to sell the property and pay the debt from the proceeds.

It is commonly thought that the mortgagor has a right to retain possession until the debt is due and unpaid, and in fact he usually does so. But we have seen that the mortgagee has just as much right of immediate possession as a buyer; and therefore, if it is not intended that he should have possession at once, the mortgage deed ought to contain a clause to the effect that the mortgagor may retain possession as long as he pays installments and interest as due, and complies with his other agreements. Such a clause is now almost universally inserted. In some States the right of possession is given to the mortgagor by statute.

One of these other agreements, which is now very common, is that the mortgagor shall keep the premises insured in a certain sum for the security of the mortgagee; and, if there be such an agreement, it should be expressed in the deed. Otherwise, if the mortgagee insures the house, he cannot charge the premium to the mortgagor.

If a mortgagor erects buildings on the mortgaged land, or puts fixtures there, and the mortgagee takes possession of the land, and *forecloses* the mortgage, he gets all these additions. If the mortgagee puts them on the land, and the mortgagor redeems, he gets the benefit of them all, without paying the mortgagee for them. Such is the effect of the law if there be no bargain between the parties about these things. But they may make any bargain about them they choose to make.

A mortgage may be assigned by an instrument executed with the same formalities as the mortgage itself. Forms for this purpose will be found among those at the end of this chapter.

The term of the mortgage may also be extended by a suitable instrument in substantially the form hereinafter given. A mortgage over-due and not thus extended may be enforced at any time notwithstanding the interest has been promptly paid; on the other hand the mortgagor may at any time pay off the mortgage debt.

It is to be remembered that the mortgage is only security for the payment of the note or bond by which it is accompanied. By taking this security the mortgagee does not lose his rights as holder of the note or bond, and is not limited to his remedies as mortgagee. He may, therefore, without attempting to enforce his mortgage, sue the mortgagor on his note or bond; and if the mortgaged property be sold under foreclosure proceedings and the amount realized from the sale is insufficient to pay the mortgage debt with interest and charges he may recover the balance by suit. In some of the States, however, the rights of the mortgagee in this latter case are regulated by statute. On the other hand, so long as the mortgage debt remains unpaid he may, as a general rule, enforce his rights under the mortgage even though his remedy on the note is barred by the statute of limitations. In some of the States, however, as will be seen in the abstracts following this chapter, when the right to recover on the note is barred, all rights under the mortgage are barred also.

When the mortgage debt is paid the mortgagor is entitled to have the mortgage discharged. Forms for this purpose will be found among those at the end of this chapter. In some States it is common to release a mortgage by a quitclaim deed from the holder of the mortgage to the holder of the land or of the equity or right of redemption. And not unfrequently it is done by an acknowledgment of satisfaction, release, or discharge drawn by the Register or Recorder of Deeds on the margin of the record of the mortgage, and duly signed by the mortgagee or holder of the mortgage. Any instrument will have the effect of discharging and annulling a mortgage, which declares with sufficient definiteness that the debt, obligation, or covenant, which that mortgage was intended to secure, is paid, satisfied, or performed; the instrument being duly signed, sealed, and acknowledged, and placed on record. The Massachusetts form, hereinafter given, which includes a quitclaim would undoubtedly be sufficient in any part of the country. It takes effect like other deeds from the time it is placed in the Recorder's hands. Whenever a mortgage is discharged in any way, the Recorder makes an entry to that effect on the margin of the record of the mortgage.

Mortgages must be executed, acknowledged, and recorded in the same manner as other deeds. For forms of acknowledgment see chapter on deeds. Assignments, extensions and discharges must also be acknowledged and recorded.

The remarks which were made at the close of the preceding chapter (just before the forms) concerning the various forms of deeds conveying land, apply with equal force to deeds of mortgage of land, as in most respects the requirements are the same. Note especially what is said as to the wife's release of dower and homestead, and the husband's joining in the wife's deeds, and the changes in the forms necessary for these purposes.

The following forms are arranged in the same manner as the forms of deeds in the preceding chapter, giving, either by copy or by reference, the appropriate form for each of the States and the Canadian Provinces. Following these are forms of assignments and other instruments relating to mortgages, with some special clauses. At the end of the chapter will be found an abstract of the laws of the several States relating to the foreclosure of mortgages and redemption and some other special provisions.

FORMS OF MORTGAGES FOR THE SEVERAL STATES AND TERRITORIES, AND THE DOMINION OF CANADA.**ALABAMA.****(207.)**

See Massachusetts; adding the following clause:

"I hereby waive all my exemptions under the constitution and laws of the State of Alabama for the payment of said indebtedness.

ALASKA.**(208.)**

See California.

ARIZONA.**(209.)**

Know all Men by these Presents, That I _____ of _____ in the county of _____ and State of _____, mortgagor, for and in consideration of _____ dollars, to me in hand paid by _____ of _____ mortgagee, have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said _____ all that certain premises described as follows, to wit: (*description*). To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said _____, mortgagee, his heirs and assigns, forever.

And I _____ wife of the said _____, for the consideration above expressed, do hereby renounce and release to said mortgagee all my right and title or claim to dower in and to the above described lands and premises.

This conveyance is intended as a mortgage to secure the payment of a certain promissory note, in words and figures following, to wit: (*copy of note*).

And the said mortgagor agrees and does hereby covenant to keep the buildings thereon insured, in favor of the mortgagee, in a good company, to be selected by the mortgagee, in a sum not less than _____, during the life of this mortgage, and in case said mortgagor fails to secure said insurance, the mortgagee is hereby authorized to procure the same.

And this instrument shall be void if said promissory note, principal and interest, be well and truly paid when due, according to the tenor and effect thereof. But it is distinctly understood and agreed that if the interest on said promissory note, or the principal thereon, shall not be punctually paid when the same shall become due, as in said promissory note mentioned, then, in such case, the principal sum of said note, and the interest thereon shall be deemed and taken to be wholly due and payable, and proceedings may forthwith be had by the said mortgagee, his heirs, executors, administrators or assigns, for the recovery of the same, either by suit on said note, or on this mortgage and note; and in any suit or other proceedings that may be had for the recovery of said principal sum and interest thereon, it shall and

may be lawful for the said mortgagee, his heirs, executors, administrators or assigns, to include in the judgment that may be recovered, attorney's fees not exceeding _____ per cent. thereon upon the amount found due the plaintiff on said note and this mortgage, or in case of settlement, after suit brought, but before judgment rendered, then _____ per cent. on amount found due at time of settlement, as well as all payments that the said mortgagee, his heirs, executors, administrators or assigns may be obliged to make for his security, or on account of any taxes, insurance, charges, incumbrances or assessments whatsoever on the said premises, legally laid or made thereon.

Witness our hands this _____ day of _____, A. D. 19____

Signed and Delivered in the Presence of

ARKANSAS.

(210.)

Power of Sale.

Know all Men by these Presents, That I, _____ of _____, for and in consideration of the sum of _____ dollars, to me in hand paid, and the promises hereinafter set forth, do hereby grant, bargain, and sell unto _____ of _____ and unto his heirs and assigns, forever, the following property, namely: all that, etc. And I hereby covenant with the said _____ that I will forever warrant and defend the title to said property against all lawful claims.

And I, _____ wife of the said _____ do hereby release unto the said _____ all my right of dower and homestead in and to the said lands.

This sale is on condition that whereas I am justly indebted unto the said _____ in the sum of _____ dollars, evidenced by one promissory note (*here give copy or terms of note*); now, if I shall pay said moneys at the times and in the manner aforesaid, then the above conveyance shall be null and void; and in case of non-payment, then the said grantee, or his assignee, shall have power to sell said property at public sale, to the highest bidder, for cash, at _____, in the _____ of _____, county of _____ and State of Arkansas, public notice of the time and place of said sale having been first given _____ days, by advertising in some newspaper published in said county; at which sale the said grantee or his assignee may bid and purchase as any third person might do. I hereby authorize the said grantee or his assignee to convey said property to any one purchasing at said sale, and to convey an absolute title thereto, and the recitals of his deed of conveyance shall be taken as prima facie true; and the proceeds of said sale shall be applied, first, to the payment of said debt and interest; and the remainder, if any, shall be paid to said grantor. We hereby waive any and all rights of appraisalment or redemption under the laws of the State of Arkansas, and especially of redemption under the act of the general assembly of the State of Arkansas, approved May 8, 1899.

In Witness, etc.

This Indenture, Made the _____ day of _____, 19____, between _____, of _____, party of the first part, and _____, of _____, party of the second part, witnesseth, that the said party of the first part is justly indebted to the said party of the second part in the sum of _____ dollars, lawful money of the United States, upon a promissory note made at the date hereof by the said party of the second part, in the words and figures following, to wit: (*here insert copy of mortgage note*).

Now This Indenture witnesseth, that for the purpose of securing the payment of the said promissory note and the interest thereon, as it shall become due and payable, the said party of the first part, for and in consideration of the premises, as also in consideration of the sum of one dollar, lawful money, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, conveyed and confirmed, and by these presents doth hereby grant, bargain, sell, convey, and confirm, unto the said party of the second part, his heirs and assigns all that, etc.: _____. To have and to hold the said premises, with all the tenements, hereditaments and appurtenances thereunto belonging, unto the said party of the second part, his heirs and assigns, forever.

Provided, nevertheless, that if the said party of the first part shall well and truly pay, or cause to be paid, the said promissory note, with the interest as it shall become due and payable thereon, according to the terms and effect thereof, then this indenture and the estate hereby granted shall be null and void, else to remain in full force and virtue. But it is distinctly understood and agreed that if the interest on said promissory note, or the principal thereof, shall not be punctually paid when the same becomes due and payable, as in said promissory note mentioned, then and in such case the principal sum of said promissory note and the interest shall be deemed and taken to be wholly due and payable, and proceedings may forthwith be had by the said party of the second part, his heirs, executors, administrators or assigns, for the recovery of the same, either by suit on said note or on this mortgage; anything in said note or in this indenture contained to the contrary thereof notwithstanding. And in any suit or other proceedings that may be had for the recovery of the said principal sum and interest on either said note or this mortgage, it shall and may be lawful for the said party of the second part, his heirs, executors, administrators or assigns, to include in the judgment that may be recovered, counsel fees, and charges of attorneys, and counsel employed in such foreclosure suit, not exceeding _____ dollars, and _____ per cent. upon the amount due to the plaintiff on said note and this mortgage; and if said suit is settled before judgment, the same fee and percentage shall be allowed, as well as all payments that the said party of the second part, his heirs, executors, administrators or assigns, may make for his or their security, or on account of any taxes, charges, incumbrances, or assessments whatsoever on the said premises.

In Witness, etc.

A power of sale may be inserted in the mortgage. Deeds of trust in place of mortgages are also in use, of which the following is a usual form:

(212.)

Deed of Trust to Secure a Debt, Payable in Gold Coin.

This Deed of Trust, made this _____ day of _____, A. D. nineteen hundred _____, between _____ (*name, residence, and occupation of the debtor and grantor*) of the first part, and _____ (*name, residence, and occupation of the grantees, trustees*) of _____ parties of the second part, and _____ (*name, residence, and occupation of creditor, for whose security the trust is created*) of the third part, Witnesseth:

Whereas, the said _____ has borrowed and received of the said _____ in gold coin of the United States, the sum of _____ dollars, and has agreed to repay the same on the _____ day of _____, A. D. nineteen hundred and _____ to the said _____ in like gold coin, with interest, according to the terms of a certain promissory note, of even date herewith, executed and delivered therefor by the said _____

Now this Indenture Witnesseth, That the said party of the first part, in consideration of the aforesaid indebtedness to the said party of the third part, and of one dollar to him in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, and for the purpose of securing the payment of said promissory note, and of any sum or sums of money, with interest thereon, that may be paid or advanced by, or may otherwise be due to the parties of the second or third part, under the provisions of this instrument, doth by these presents grant, bargain, sell, convey, and confirm unto the parties of the second part in joint tenancy, and to the survivor of them, their successors and assigns, the piece or parcel of land situate in the city (or town) of _____, county of _____, State of California, described as follows: _____ (*here describe the land or premises conveyed*).

And also, all the estate and interest, homestead, or other claim or demand, as well in law as in equity, which the said party of the first part now has or may hereafter acquire, of, in, and to said premises, with the appurtenances;

To Have and to Hold the same to the parties of the second part, as joint tenants (and not as tenants in common), with right of survivorship as such, and to their successors and assigns (said parties of the second part and their successors being hereby expressly authorized to convey, subject to the trusts herein expressed, the lands above described), upon the trusts and confidences hereinafter expressed, to wit:

FIRST, During the continuance of these trusts, the party of the third part and the parties of the second part, their successors and assigns, are hereby authorized to pay, without previous notice, all taxes, assessments, and liens now subsisting, or which may hereafter be imposed by national, state, county, city, or other authority, upon said premises, and on the money so borrowed as aforesaid, to whomsoever assessed, and all or any incumbrances now subsisting, or that may hereafter subsist thereon, which may in their judgment

affect said premises or these trusts, at such time as in their judgment they may deem best; or in their discretion, for the benefit and at the expense of said party of the first part, to contest the payment of any such taxes, assessments, liens, or incumbrances, or defend any suit or proceeding instituted for the enforcement thereof; and in like manner to prosecute or defend any suit or proceeding that they may consider proper to protect the title to said premises, and these trusts shall be and continue as security to the party of the third part, and his assigns, for the repayment, in gold coin of the United States, of the moneys so borrowed by the party of the first part and the interest thereon, and of all amounts so paid out, and costs and expenses incurred as aforesaid, whether paid by the parties of the second part or third part, with interest on such payments at the rate of _____ per cent. per month until final repayment.

SECONDLY, In case the said party of the first part shall well and truly pay, or cause to be paid at maturity, in gold coin as aforesaid, all sums of money so borrowed as aforesaid, and the interest thereon, and shall upon demand repay or deposit all other moneys secured, or intended to be secured hereby, and also the reasonable expenses of this trust, then the parties of the second part, the survivor of them, their successors and assigns, shall reconvey all the estate in the premises aforesaid to them by this instrument granted unto them, their heirs and assigns, at his request and cost.

THIRDLY, If default shall be made in the payment of any of said sums of principal or interest, when due, in the manner stipulated in said promissory note, or in the reimbursement of any amounts herein provided to be paid, or of any interest thereon, then the said parties of the second part, or the survivor of them, their successors or assigns, on application of the party of the third part, or his assigns, shall sell the above granted premises, or such part thereof as in their discretion they shall find it necessary to sell in order to accomplish the objects of these trusts, in the manner following, namely:

They shall first publish the time and place of such sale, with a description of the property to be sold, at least _____ a week for _____ weeks, in some newspaper published in the county of _____ and may from time to time postpone such sale by publication; and, on the day of sale so advertised, or to which such sale may be postponed, they may sell the property so advertised, or any portion thereof, at public auction, in any county where any part of said property may be situated, to the highest cash bidder; and the holder or holders of said promissory note, their agent or assigns, may bid and purchase at such sale.

And the parties of the second part, their successors or assigns, shall establish as one of the conditions of such sale, that all bids and payments for said property shall be made in like gold coin as aforesaid, and upon such sale they shall make, execute, and after due payment made, shall deliver to the purchaser or purchasers, his or their heirs and assigns, a deed or deeds of grant, bargain, and sale, of the above granted premises, and out of the proceeds thereof shall pay:

FIRST, The expenses thereof, together with the reasonable expenses of this trust, including counsel fees of _____ dollars, in gold coin, which shall

become due upon any default made by the party of the first part in any of the payments aforesaid.

SECOND, All sums which may have been paid by the said parties of the second or third part, their successors or assigns, or the holders of the note aforesaid, and not reimbursed, and which may then be due, whether paid on account of incumbrances or insurance, as aforesaid, or in the performance of any of the trusts herein created, and with whatever interest may have accrued thereon; next the amount due and unpaid on said promissory note, with whatever interest may have accrued thereon; and lastly, the balance or surplus of such proceeds, if any, to said party of the first part, his heirs or assigns.

And in the event of a sale of said premises, or any part thereof, and the execution of a deed or deeds therefor, under these trusts, then the recitals therein of default and publication shall be conclusive proof of such default and of the due publication of such notice; and any such deed or deeds, with such recitals therein, shall be effectual and conclusive against the said party of the first part, his heirs or assigns, and all other persons, and the receipt for the purchase-money contained in any deeds executed to the purchaser, as aforesaid, shall be a sufficient discharge to such purchaser from all obligation to see to the proper application of the purchase-money, according to the trusts aforesaid.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

(Signature.) (Seal.)

Duly Signed, Sealed, and Delivered in the presence of

COLORADO.

(213.)

Statutory Form.

Know all Men by these Presents, That I, _____ of the County of _____ and State of _____, hereby mortgage to _____ of the County of _____ and State of _____, to secure the payment of _____ dollars, due as follows: _____ the following described real property situate in _____ County, State of Colorado, to wit: with the appurtenances, and warrant the title to the same. Signed and delivered this _____ day of _____, 19____

(214.)

Trust Deed to Secure Payment of a Promissory Note.

This Indenture, Made this _____ day of _____ in the year of our Lord, one thousand nine hundred and _____ between _____ whose address is _____, County of _____ and State of Colorado, party of the first part, and the Public Trustee of the _____, County of _____ and State of Colorado, party of the second part,

Witnesseth, That whereas _____ has executed his Promissory Notes, bearing even date herewith, payable to the order of _____ at _____ for

the sum of _____ dollars, _____ after the date thereof, with interest thereon from date until _____ at the rate of _____ per cent. per annum, interest payable _____

And Whereas, The said _____ is desirous of securing not only the prompt payment of said Promissory Notes, but also of effectually securing and indemnifying the said _____ for or on account of any assignment, indorsement or guarantee of said Promissory Notes.

Now, Therefore, The said party of the first part, in consideration of the premises and for the purposes aforesaid, and in the further consideration of one dollar to him in hand paid by the party of the second part, the receipt whereof is hereby confessed, has and hereby does grant, bargain, sell and convey unto the said party of the second part and his successors in trust, forever, all the premises situate in the _____, County of _____ and State of Colorado, known and described as follows, to-wit: _____

To Have and to Hold the Same, Together with all and singular the privileges and appurtenances thereunto belonging: IN TRUST NEVERTHELESS, that in case of default in the payment of said Notes or any of them, or any part thereof, or interest thereon, according to the tenor and effect of said Notes, or any of them, then upon notice and demand in writing, filed with said party of the second part, by the beneficiary hereunder, or the legal holder of the note or notes secured hereby, that such beneficiary or legal holder has declared a violation of any of the covenants herein or in any prior incumbrance contained, and has elected to advertise said premises for sale, it shall and may be lawful for said party of the second part, or his successors in trust, to sell and dispose of said premises, and all the right, title, benefit and equity of redemption of the said party of the first part, his heirs or assigns therein, at public auction, at the _____ door of the Court House, in the _____, County of _____, in the State of Colorado, for the highest and best price the same will bring in cash, four weeks' public notice having been previously given of the time and place of such sale, by advertisement weekly in one of the newspapers of general circulation at that time published in said _____ County, a copy of which printed notice shall, as soon as printed, be mailed to said party of the first part, and all subsequent incumbrancers, at the address herein given, and to make, execute and deliver to the purchaser or purchasers at such sale, certificate or certificates of purchase, and after the expiration of the time of redemption provided by law, upon demand of the person or persons entitled thereto, to make and deliver to said purchaser or purchasers, or his, her, or their assign or assigns, good and sufficient deed or deeds of conveyance to the premises sold; and out of the proceeds or avails of such sale, and the purchase money paid thereon, after first paying all fees and costs of advertising and sale, commission and all other expenses of this trust, including all moneys advanced for taxes, or other liens and assessments or on prior incumbrances, with the interest thereon, to pay the principal and interest due on said notes according to the tenor and effect thereof, rendering the overplus (if any) unto the said party of the first part, his legal representatives or assigns, on reasonable request; and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase money; which sale or sales

and said deed or deeds so made shall be a perpetual bar, both in law and equity, against the said party of the first part, his heirs and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, from, through or under said party of the first part, or any of them, unless said premises are redeemed within the time or times and according to the statute in such cases made and provided. The holder or holders of said note or notes may become the purchaser of said property, or any part thereof.

And the said _____ for himself, his heirs, executors and administrators, covenants and agrees to and with the said party of the second part and his successors in trust, that at the time of the en sealing and delivery of these presents he is well seized of the above described premises in fee simple, and has good right, full power and lawful authority to grant, bargain and sell the same in manner and form as aforesaid; hereby fully and absolutely waiving and releasing all rights and claims he may now or hereafter have in or to said above described premises as a Homestead Exemption, under and by virtue of any Act of the General Assembly of the State of Colorado now existing, or which may hereafter be passed in relation thereto, and that the same are free and clear of all liens and incumbrances whatsoever except _____ and that he will pay all amounts becoming due on any prior incumbrance and all taxes or assessments levied or assessed against said premises up to the time the said Notes shall become due and payable, or shall have been paid in full.

And it is Stipulated and Agreed, That in case of default in any of said payments of principal or interest, as aforesaid, or a breach of any of the covenants or agreements herein, then and in that case the whole of the said principal sum hereby secured, and interest thereon, according to the tenor and effect of said Notes, shall and may at once become due and payable, anything in said Notes to the contrary notwithstanding, and the said premises be sold in like manner and with the same effect as if the indebtedness had matured.

Is Witness Whereof, The said party of the first part has hereunto set his hand and seal the day and year first above written.

Witness.

CONNECTICUT.

(215.)

To all People to whom these Presents shall come, Greeting: Know ye, that I, _____ of _____, for the consideration of _____, received to my full satisfaction of _____ of _____, do give, grant, bargain, sell and confirm unto the said _____ (*description of premises*).

To Have and to Hold the above granted and bargained premises, with the appurtenances thereof, unto him the said grantee, and his heirs and assigns forever, to his and their own proper use and behoof. And also, I, the said grantor, do for myself and my heirs, executors, and administrators, covenant with the said grantee, his heirs and assigns, that at and until the en sealing of these presents, I am well seized of the premises, as a good indefeasible estate in *fee simple*; and have good right to bargain and sell the same in manner and form as is above written; and that the same is free from all encum-

brances whatsoever. And furthermore, I, the said grantor, do by these presents bind myself and my heirs forever to warrant and defend the above granted and bargained premises to him, the said grantee, his heirs and assigns, against all claims and demands whatsoever. The condition of this deed is such, that whereas the said grantor is justly indebted to the said grantee in the sum of _____ dollars as evidenced by a promissory note for _____ dollars of even date herewith, payable to said grantee or order; now therefore, if said note shall be well and truly paid according to its tenor, then this deed shall be void, otherwise to be and remain in full force and effect. In witness whereof, etc.

DELAWARE.

(216.)

Indenture, Made the _____ day of _____, 19____, between _____ of _____, party of the first part, and _____ of _____, party of the second part. Whereas the said party of the first part in and by a certain obligation or writing obligatory under his hand and seal, bearing even date herewith, stands bound unto the said party of the second part in the sum of _____ dollars, lawful money of the United States, conditioned for the payment of the sum of _____ dollars, as by reference to the said obligation and condition thereof will appear:

Now this Indenture witnesseth, that the said party of the first part, for and in consideration of the aforesaid debt or sum of _____ dollars, and for the better securing the payment of the same, with interest, as aforesaid, unto the said party of the second part, his executors, administrators and assigns, in discharge of the said recited obligation, as also of the further sum of one dollar to the said party of the first part now paid by the said party of the second part, the receipt of which is hereby acknowledged, has granted, bargained, sold, released and confirmed, and by these presents doth grant, bargain, sell, release and confirm, unto the said party of the second part, his heirs and assigns, all that, etc.: _____ together with all and singular the improvements, ways, woods, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances whatsoever, thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof.

To Have and to Hold the said improvements, hereditaments and premises hereby granted or mentioned, or intended to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use and behoof of the said party of the second part, his heirs and assigns, forever. Provided always, nevertheless, that if the said party of the first part, his heirs, executors, administrators or assigns, shall and do well and truly pay, or cause to be paid, unto the said party of the second part, his executors, administrators or assigns, the aforesaid debt or sum of _____ dollars on the day and at the time hereinbefore mentioned and appointed for the payment thereof, with interest, according to the condition of the said recited obligation, without any fraud or further delay, and without any deduction, defalcation or abatement to be made of anything, for or

in respect of any taxes, charges or assessments whatsoever, that then and from thenceforth as well this present indenture and the estate hereby granted as the said recited obligation shall cease, determine, and become absolutely void and of no effect, anything hereinbefore contained to the contrary notwithstanding.

In Witness, etc.

DISTRICT OF COLUMBIA.

(217.)

Statutory Form with Power of Sale.

This Mortgage, Made this _____ day of _____, in the year _____, witnesseth that whereas I, _____ of _____, am indebted unto _____ of _____, in the sum of _____, payable _____, for which I have given, to said _____ (*description of note or bond*). Now, in consideration thereof, I hereby grant unto the said _____ all that (*description of property*); provided that if I shall punctually pay said note (*or bond*), according to the tenor thereof, then this mortgage shall be void. And if I shall make default in such payment the said _____ is hereby authorized and empowered to sell said property at public auction on the following terms (*statement of terms*) and out of the proceeds of sale to retain whatever shall remain unpaid on any said indebtedness, and the costs of such sale, and the surplus, if any, to pay to me.

Given under my hand and seal.

_____ (*Seal.*)

Mortgages are more commonly in form of trust deeds, for which see Virginia.

FLORIDA.

(218.)

See Delaware—changing form to secure promissory note, which is commonly used instead of bond.

GEORGIA.

(219.)

Power of Sale.

GEORGIA, }
_____ COUNTY. }

This Indenture, Made the _____ day of _____ in the year of our Lord one thousand nine hundred and _____, between (*name and occupation of grantor*) of the County of _____ of the one part, and (*name and occupation of grantee*) of the County of _____ of the other part:

Witnesseth, That the said _____ for and in consideration of the sum of _____ in hand paid, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents doth grant, bargain, sell, aliene, convey, and confirm unto the said _____ his heirs and assigns, all (*here describe the premises granted*).

To Have and to Hold the said _____ with all and singular the rights, members, and appurtenances thereunto appertaining, to the only proper use, benefit, and behoof of him the said _____, his heirs, executors, administrators, and assigns, in fee-simple; and the said _____ the said bargained, premises unto the said _____, his heirs, executors, administrators, and assigns, against the said _____, his heirs, executors, and administrators, and against all and every other person or persons, shall and will warrant and forever defend by virtue of these presents.

And the said _____ hereby agrees that if the debt to secure which this deed is made is not promptly paid at maturity according to the tenor and effect of a certain promissory note made at the execution of this deed, then the said _____ may, and by these presents is authorized to sell at public outcry to the highest bidder, for cash, all of said property, or a sufficiency thereof to pay said indebtedness with the interest thereon and the costs of the proceeding, after advertising the time, place, and terms of sale in a newspaper published in _____ for _____ days. And the said _____ may make to the purchaser or purchasers of said property good and sufficient titles in fee-simple to the same, thereby divesting out of the said _____ all right, title, and equity that he may have in and to said property, and vesting the same in the purchaser or purchasers aforesaid. The proceeds of said sale are to be applied first to the payment of the said debt and interest and the expenses of this proceeding, the remainder, if any, paid to _____.

In Witness Whereof, The said _____ and _____ his wife, who hereby consents to the execution of this deed, have hereunto set their hands and affixed their seals, and delivered these presents, the day and year first above written.

Signed, Sealed, and Delivered in Presence of us

(Signatures.) (Seals.)

HAWAII.

(220.)

See Massachusetts.

IDAHO.

(221.)

See California.

ILLINOIS.

(222.)

This Indenture witnesseth, that the mortgagor, _____ of _____ mortgages and warrants to _____ of _____, to secure the payment of _____ dollars, payable as follows, to wit: _____ with interest at the rate of _____ per cent. per annum, payable _____ annually, according to the tenor and effect of a certain promissory note of even date herewith, payable to the order of said mortgagee, and signed by said mortgagor, all the following described real estate situated in _____ in the county of _____ and State of Illinois, to wit: _____ hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of the State of Illinois, and all right to retain possession of said premises after any de-

fault in or breach of any of the covenants, agreements or provisions herein contained.

And it is further provided and agreed, that if default be made in the payment of the said promissory note (*or any of them, if more than one*), or any part thereof, or the interest thereon, or any part thereof, when due, or in case of waste or non-payment of taxes or assessments or neglect to procure or renew insurance, as hereinafter provided, then and in such case the whole of said principal and interest secured by the said note in this mortgage mentioned shall thereupon, at the option of the holder of said note, become immediately due and payable; anything herein or in said promissory note contained to the contrary, notwithstanding; and this mortgage may, without notice to the said mortgagor of said option or election, be immediately foreclosed; and it shall be lawful for said mortgagee, his agents or attorneys, to enter into and upon said premises, and to receive all rents, issues and profits thereof, the same when collected, after the deduction of reasonable expenses, to be applied upon the indebtedness secured hereby.

And the said mortgagor further covenants and agrees to and with the said mortgagee, that he will in the meantime pay all taxes and assessments on said premises, and will, as a further security for the payment of said indebtedness, keep all buildings that may at any time be upon said premises insured in some reliable company up to the insurable value thereof, or up to the amount remaining unpaid of the said indebtedness, by suitable policies, payable, in case of loss, to the said mortgagee, and deliver to him all policies of insurance thereon as soon as effected, and all renewal certificates therefor; and said mortgagee shall have the right to collect, receive and receipt, in the name of said mortgagor or otherwise, for any and all moneys that may become payable or collectable upon any of such policies of insurance by reason of damage to or destruction of said buildings, or any of them, and apply the same, less his reasonable expenses in obtaining such money, in satisfaction of the money secured hereby; or, in case the mortgagee shall so elect, may use the same in repairing or rebuilding such buildings; and in case of refusal or neglect of said mortgagor thus to insure, or deliver such policies, or to pay taxes, said mortgagee may procure such insurance, or pay such taxes, and all moneys thus paid shall be secured hereby, and shall bear interest at _____ per cent., and be paid out of the proceeds of the sale of said premises, or out of such insurance money, if not otherwise paid by said mortgagor.

And said mortgagor further agrees that in case of default in the payment of the interest on said note when it becomes due and payable, it shall bear like interest with the principal of said note.

And it is further expressly agreed by and between said mortgagor and said mortgagee, that if default be made in the payment of said promissory notes or any of them, or any part thereof, when due; or in case of a breach of any of the covenants or agreements herein contained; or in case said mortgagee is made a party to any suit by reason of the existence of this mortgage; then, or in any of such cases, said mortgagor shall at once owe said mortgagee his reasonable attorney's or solicitor's fees for protecting

his interest in such suit, and for the collection of the amount due and secured by this mortgage, whether by foreclosure proceeding or otherwise, and a lien is hereby given upon said premises for such fees; and in case of foreclosure hereof, a decree shall be entered for such reasonable fees, together with whatever other indebtedness may be due and secured hereby.

And it is further mutually understood and agreed, by and between the parties hereto, that the covenants, agreements and provisions herein contained shall apply to, and, so far as the law allows, be binding upon and be for the benefit of the heirs, executors, administrators and assigns of the said parties respectively.

In Witness Whereof, The said mortgagor has hereunto set his hand and seal the _____ day of _____, A. D. 19____.

INDIANA.

(223.)

This Indenture witnesseth, that _____, of _____ in the county of _____ and state of _____ mortgages and warrants to _____ of _____ etc., the following real estate, namely, all that, etc., _____ to secure the payment, when it shall become due, of _____ dollars, as evidenced by a promissory note of even date herewith, by which the mortgagor promises to pay to the mortgagee said sum of _____ dollars in _____ years from said date, with interest thereon at the rate of _____ per cent. per annum; and the mortgagor expressly agrees to pay the sum of money above secured without relief from valuation or appraisal laws.

In Witness, etc.

IOWA.

(224.)

Know all Men by these Presents, That _____ of _____, in consideration of the sum of _____ dollars in hand paid by _____ of _____, does hereby sell and convey unto the said _____ the following described premises, situated in the County of _____ and State of Iowa, to wit: _____ and the said _____ hereby covenants with the said _____ that he holds said premises by title in fee simple; that he has good right and lawful authority to sell and convey the same; that they are free and clear of all liens and incumbrances whatsoever; and he covenants to warrant and defend the said premises against the lawful claims of all persons whomsoever. And, _____ wife of the said _____ hereby relinquishes her right of dower in and to the above described premises.

Provided always, and these premises are upon this express condition, that if the said _____ his heirs, executors or administrators, shall pay, or cause to be paid, to the said _____, his executors, administrators or assigns the sum of _____ dollars, on the _____ day of _____ 19____, with interest thereon semi-annually, according to the tenor and effect of the promissory note of the said _____ payable to _____ and bearing date _____, then these presents to be void, otherwise to remain in full force. And it is hereby agreed that the said _____ shall keep the buildings on said prop-

erty insured in a good and reliable company, to be selected by said mortgagee, in the sum of _____ dollars. The said first party further agrees that the second party, at any time during the existence of this indebtedness, or any part thereof, and until the same is fully paid, shall have full power, and is hereby authorized as attorney in fact of said first party to pay all liens of any kind, either prior or subsequent, that may in any manner affect the title to the land herein conveyed; and for the repayment of all moneys so paid with interest thereon from the date of such payment at the rate of ten per cent. per annum, payable semi-annually, this indenture shall be security in like manner as for the payment of said note. And it is further agreed, that if the said _____ allows the taxes to become delinquent upon said property, or permits the same, or any part thereof, to be sold for taxes, or if the said _____ fails to pay the interest on said note promptly as the same becomes due, the note secured hereby shall become due and payable in _____ days thereafter; and the mortgagee, his heirs or assigns may proceed at once to foreclose this mortgage; and in case it becomes necessary to commence proceedings to foreclose the same, then the said _____ in addition to the amount of said debt, interest and costs, agrees to pay to the mortgagee herein named a reasonable attorney's fee for collecting the same, which fee shall be included in judgment in such foreclosure case.

Signed and delivered this _____ day of _____ 19____

KANSAS.

(Statutory Form.)

(225.)

_____ mortgages and warrants to _____ (*here describe the premises.*) to secure the payment of (*here insert the sum for which the mortgage is granted, or the notes or other evidences of debt, or description thereof, sought to be secured, also the date of payment.*)

Dated _____

KENTUCKY.

(226.)

This Indenture, Made and entered into this _____ day of _____, 19____, by and between _____, of _____, in the county of _____ and State of _____, of the first part, and _____ of _____, of the second part, witnesseth, that the party of the first part, for and in consideration of his indebtedness to the party of the second part, as follows: the sum of _____ dollars, payable in _____ years from this date, with interest thereon at the rate of _____ per cent. per annum, payable semi-annually, as evidenced by his promissory note, of even date herewith, and to secure payment of the same, the said party of the first part has granted, bargained and sold, and by these presents doth grant, bargain and sell, to the party of the second part, all that, etc. To have and to hold to said party of the second part his heirs and assigns, forever, with general warranty.

This indenture is conditioned as follows:

Whereas, the said party of the first part is indebted to the said party of the second part as aforesaid: Now if said party of the first part shall pay said indebtedness at maturity, then this indenture shall be void, else remain in full force. And should said indebtedness, or any part thereof, be collected by legal or equitable proceedings, or be paid after the institution of such proceedings, then said party of the first part shall pay all expenses of collection, including reasonable attorney's fees and commissions incurred by the party of the second part or his assigns, and which he or his assigns may have paid or be liable to pay on account of such legal or equitable proceedings. And it is expressly stipulated and agreed that the lien of this mortgage shall extend to and include such expenses, attorney's fees, and commission, and that the same shall be included in any judgment or decree rendered for a foreclosure of this mortgage.

Witness the hand and seal of the said party of the first part the day and year first above written.

LOUISIANA.

(227.)

[This being a peculiar deed, presenting some unusual difficulties in filling up the blanks, it is thought best to give a full copy of a carefully prepared deed, as the same was drawn and executed in accordance with the law of Louisiana.]

STATE OF LOUISIANA,
PARISH AND CITY OF NEW ORLEANS. }

Be it Known, That on this *third* day of *June*, in the year of our Lord one thousand nine hundred and nine and of the independence of the United States of America, the one hundred and thirty-third.

Before Me, Andrew Hero, Jr., a Notary Public in and for the Parish and City of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned,

Personally Came and Appeared,—*Antonio Corbett*, of this city, who declared that he is justly and truly indebted unto *James Thompson*, also of this city, in the sum of *eight hundred dollars*, borrowed money this day had: in settlement and as evidence thereof the said *Antonio Corbett* has made and furnished his promissory note for like sum of *eight hundred dollars*, drawn to the order of and indorsed by *himself*, dated this day, and made payable at *twelve months after date*, with interest at the rate of *eight per cent. per annum*, from and after maturity, if not then paid, until final payment, which said note, after having been paraphed by me, the said Notary, to identify it, herewith, was delivered to the said *Thompson*, who hereby acknowledges the receipt thereof.

Now, in order to secure the full and punctual payment of the said note, in capital and interest, at maturity, the said *Corbett* moreover declared that *he does* by these presents specially mortgage and hypothecate in favor of the said *James Thompson*, his heirs and assigns, and of any and all such person or persons as may hereafter be the holder or holders of the said note, the following described property, to wit:

A certain lot of ground, together with the buildings and improvements thereon, and all rights and privileges thereto belonging, situate in the Faubourg Lafayette, Fourth District of this city, in the square numbered two hundred and eighty-five, which is bounded by Liberty (late Ellen), Josephine, St. Andrews (formerly Gormley's Canal), and Franklin (late Fulton Avenue) streets, and designated as lot number six on a plan of the former city of Lafayette, and a sketch drawn by Hugh Grant, surveyor, under date of the 15th of March, 1848, and annexed for reference to an act passed before L. R. Kenney, late a Notary in said parish of Jefferson, which said lot measures, in American measure, twenty-seven feet front on said Liberty (late Ellen) street, by one hundred and twenty feet in depth, between parallel lines, being the same property which said mortgagor acquired by purchase from the widow and heirs of Henry Mumford, by an act passed before William Shannon, a Notary in this city, on the 12th day of March, eighteen hundred and sixty-seven.

The said property is so to remain mortgaged and hypothecated until the full and final payment of the aforesaid note in capital and interest; the said mortgagor hereby binding himself and his heirs not to alienate, deteriorate, nor encumber the same to the prejudice of these presents, which are accepted by said mortgagee.

And the said Corbett further declared that he does by these presents bind and obligate himself to cause all and singular the buildings and improvements on the lot of ground afore described, to be insured and kept insured against the risk of fire, by one of the insurance companies of this city, in the sum of one thousand dollars, until the full and final payment of the afore described note, and to transfer and deliver unto the said mortgagee the policy or policies of such insurance or insurances; in default whereof, said mortgagee, and any and all holders of said note, is and are hereby authorized to cause such insurance or insurances to be made and effected at the cost, charge, and expense of the said mortgagor. But this clause shall not be construed as obligatory on such holder or holders, or as making them liable for any loss, damage, or injury which may result from the non-insurance of the said buildings.

And the said mortgagor further declared that he does by these presents consent, agree, and stipulate that in the event of the said note not being punctually paid at maturity, it shall be lawful for and he does hereby authorize the said mortgagee, or any other holder or holders thereof, to cause all and singular the property hereinbefore described, and herein mortgaged, to be seized and sold under executory process (issued by any competent court) without appraisement, to the highest bidder, payable in cash; the said mortgagor herein expressly dispensing with all and every appraisement thereof, and by these presents waiving and renouncing the benefit of appraisement, and of all laws or parts of laws relative to the appraisement of movable or immovable effects etc. seized and sold under executory or other legal process, the said mortgagor hereby confessing judgment in favor of said mortgagee, and such person or persons who may be the holder or holders of said note for the full amount thereof, capital and interest, together with all costs, charges, and expenses whatsoever.

And the said mortgagor further declares that *he does*, by these presents, bind and obligate *himself and his heirs* to pay and reimburse unto said mortgagee, and such person or persons as may be the holder or holders of said *note*, all such lawyer's or attorney's fees, together with all such costs, charges, and expenses as said mortgagee, or any such holder or holders, shall or may incur or pay, in the event of the non-payment of said *note* at maturity: said attorney's fees, however, to be fixed at *five per cent.* on the amount so in suit.

Now, to secure the faithful performance of the foregoing obligation, and the reimbursement and payment of the said lawyer's or attorney's fees, costs, charges, and expenses aforesaid, and the reimbursement and payment of all premium or premiums as shall be paid by the said mortgagee, or any holder or holders of the aforesaid *note*, in causing insurance to be effected, on default of said mortgagor as aforesaid, the said mortgagor, by these presents, further specially mortgages and hypothecates the hereinbefore described *property* unto and in favor of said mortgagee, and all holders of said *note*.

According to the annexed certificate of the Recorder of mortgages in and for this city and parish, of even date herewith, the afore described property is free from all mortgages or other incumbrances in the name of said Corbett, save the privilege for drainage, and the mortgage which he granted in favor of his vendors by his said act of purchase, to secure the payment of three hundred dollars and interest. And here the said Campbell declared, that as last holder and owner, he has received payment in full, at the execution hereof, of a certain promissory note for the sum of three hundred dollars, drawn by said Corbett, to the order of and indorsed by himself, dated the third day of June, nineteen hundred and nine, and made payable at twelve months after date, with interest at the rate of eight per cent. per annum from date until final payment: Said note representing the amount, payment of which is secured by the above recited special mortgage: and said Campbell moreover declared that in consideration of the payment, he hereby cancels and annuls said mortgage, and authorizes and requires the Recorder of Mortgages in and for this parish to erase the inscription thereof from his books: Said note was defaced and cancelled by me, Notary, at the execution hereof.

And now to these presents personally came and appeared Madam *Mary Corbett*, the wife, of lawful age, of the said *Antonio Corbett*, who, after having taken cognizance of the foregoing act, which I, the said Notary, carefully read and explained to *her*, declared and said that *she* approves and ratifies the same, and that it is *her* wish and intention to release in favor of the said mortgagee the *property* herein described from the matrimonial, dotal, paraphernal, and other rights, and from any claims, mortgages, or privileges to which *she* is or may be entitled, whether by virtue of *her* marriage with *her* said husband or otherwise.

Whereupon I, the said Notary, did inform the said *Mrs. Corbett*, apart and out of the presence and hearing of her husband, that by the laws of this State, the wife has a legal mortgage on the property of her husband: First, for the restitution of her dowry, and for the reinvestment of the dotal property sold by her husband, and which she brought in marriage, reckoning

from the celebration of the marriage. Secondly, for the restitution and re-investment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened, or the donation perfected. Thirdly, for nuptial presents. Fourthly, for debts by her contracted with her husband. And fifthly, for the amount of her paraphernal property alienated by her, and received by her husband, or otherwise disposed of for his individual interest: That in making *her* intended renunciation *she* would deprive *herself* irrevocably and forever of all rights of reclamation against the *property* herein described, whether under mortgage privilege, or otherwise.

And the said *Mrs. Corbett* did thereupon declare unto me, Notary, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal, and other rights and privileges thus secured to her by law on the property of her said husband, and that she nevertheless did persist in her intention of renouncing, and does formally renounce, not only all the rights, claims, and privileges hereinbefore enumerated and described, but all others of any nature and kind whatever, to which she is, or may be, entitled by any laws now or heretofore in force in the State of Louisiana.

And the said *Antonio Corbett* being now present, aiding, and authorizing the said *Mrs. Corbett* in the execution of these presents, *she*, the said *Mrs. Corbett*, did again declare that *she* did and does hereby make a formal renunciation and relinquishment of all *her* said matrimonial, dotal, paraphernal, and other rights, claims, and privileges, in favor of said mortgagee, binding *herself* and *her* heirs at all times to sustain and acknowledge the validity of this renunciation.

Thus Done and Passed, in my office at New Orleans aforesaid, in the presence of *Paul A. Roberts* and *George Benson*, witnesses, both of this city, who hereunto sign their names with the parties, and me, the said Notary, the day and date aforesaid, said *Mistress Corbett* not knowing how to write or sign her name, having hereto made her mark, after the same had been read and explained to her by me, Notary.

Original signed:

Paul A. Roberts,

George Benson,

(Seal.)

A true copy of the original, on file, and of record in my office.

New Orleans, La., June 3, 1909.

her

Mary X Corbett,
mark.

Antonio Corbett,

Andrew Hero, Jr., Notary Public.

Andrew Hero, Jr., Not. Pub.

MAINE.

(228.)

See Massachusetts; adding just before the dower clause the following:

"And I, the said grantor hereby covenant and agree with the said grantee,

that the right of redeeming the above mortgaged premises shall be forever foreclosed in one year next after commencement of foreclosure proceedings in any mode prescribed by statute for the foreclosure of mortgages on real estate."

MARYLAND.

(229.)

This Mortgage, Made this _____ day of _____ in the year one thousand nine hundred and _____, by (*name, residence, and occupation of the grantor*) of _____ County, in the State of Maryland, Witnesseth:

Whereas, The said (*name of the mortgagor, with his occupation and residence*) has given to (*name, residence, and occupation of the mortgagee*) his promissory note of hand (*or bond*) (*here describe the note or bond or simple obligation to secure which this mortgage is given, by date, amount, time of payment, and other terms, if there are any*).

Now this Mortgage Witnesseth, That in consideration of the premises, and of the sum of one dollar, the said _____ doth grant unto the said _____ in fee-simple, all that lot, tract, parcel, or parcels of land situate in the County and State aforesaid (*here describe the land or premises mortgaged*).

Together with the buildings and improvements thereupon, and the rights, ways, waters, privileges, appurtenances, and advantages thereto belonging, or in anywise appertaining.

Provided, That if the said _____, his executors, administrators, or assigns, shall well and truly pay to the said _____, the sum of _____ on or before the _____ day of _____, one thousand nine hundred and _____, together with the legal interest thereon semi-annually, and shall perform all the covenants herein on his part to be performed, then this mortgage shall be void.

And the said (*name of the mortgagor*) doth covenant and promise to pay to the said _____ on the _____ day of _____, one thousand nine hundred and _____, the said sum of _____, together with the legal interest thereon semi-annually.

And the said _____ doth hereby further covenant that in case of any default being made in any condition of this mortgage, then the whole mortgage debt hereby intended to be secured shall be deemed due and demandable.

And the said _____ doth further covenant to insure, and, pending the existence of this mortgage, to keep insured, the improvements on the hereby mortgaged ground, to the amount of at least _____ dollars, and to cause the policy to be effected thereon to be so framed or indorsed as, in case of fire, to inure to the benefit of the said _____, his representatives, or assigns, to the extent of his lien or claim hereunder.

Witness, the said mortgagor's hand and seal the day and year first above written.

TEST:

(*Names of the witnesses.*)

(*Signature.*) (*Seal.*)

MASSACHUSETTS.

(230.)

Power of Sale.

Know all Men by these Presents, That I, _____, of _____, (*if grantor has no wife say "being unmarried," or "having no wife living"*) in consideration of _____ dollars paid by _____, of _____, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said _____, a certain parcel of land (*with the building thereon*) situated in _____ and bounded and described as follows, namely: (*description*).

To Have and to Hold the granted premises, with all the privileges and appurtenances thereto belonging, to the said _____ and his heirs and assigns, to their own use and behoof forever.

And I hereby, for myself and my heirs, executors and administrators, covenant with the grantee and his heirs and assigns that I am lawfully seized in fee-simple of the granted premises, that they are free from all incumbrances, that I have good right to sell and convey the same as aforesaid; and that I will and my heirs, executors, and administrators shall warrant and defend the same to the grantee and his heirs and assigns forever against the lawful claims and demands of all persons.

Provided nevertheless that if I, or my heirs, executors, administrators, or assigns shall pay unto the grantee, or his executors, administrators, or assigns, the sum of _____ dollars in _____ years from this date, with interest semi-annually at the rate of _____ per cent. per annum, and until such payment shall pay all taxes and assessments, to whomsoever laid or assessed, whether on the granted premises or on any interest therein, or on the debt secured hereby; shall keep the buildings on said premises insured against fire in a sum not less than _____ dollars, for the benefit of the grantee, and his executors, administrators, and assigns, in such form and at such insurance offices as they shall approve; and, at least two days before the expiration of any policy on said premises, shall deliver to him or them a new and sufficient policy to take the place of the one so expiring; and shall not commit or suffer any strip or waste of the granted premises, or any breach of any covenant herein contained; then this deed, as also a note of even date herewith, signed by me whereby I promise to pay to the grantee, or order, the said principal sum and installments of interest at the time aforesaid, shall be void.

But upon any default in the performance or observance of the foregoing condition, the grantee, or his executors, administrators, or assigns, may sell the granted premises, or such portion thereof as may remain subject to this mortgage in case of any partial release hereof, together with all improvements that may be thereon, by public auction in said _____ (*town in which premises are situated*), first publishing a notice of the time and place of sale once each week for three successive weeks in some one newspaper published in said _____, the first publication of such notice to be not less than twenty-one days before the day of sale, and may convey the same by

proper deed or deeds to the purchaser or purchasers absolutely and in fee-simple; and such sale shall forever bar me and all persons claiming under me from all right and interest in the granted premises, whether at law or in equity. And out of money arising from such sale the grantee or his representatives shall be entitled to retain all sums then secured by this deed, whether then or thereafter payable, including all costs, charges, and expenses incurred or sustained by them by reason of any default in the performance or observance of the said condition, rendering the surplus, if any, to me or my heirs, or assigns; and I hereby, for myself and my heirs and assigns, covenant with the grantee and his heirs, executors, administrators, and assigns that, in case a sale shall be made under the foregoing power, I or they will upon request execute, acknowledge, and deliver to the purchaser or purchasers a deed or deeds of release confirming such sale, and said grantee and his assigns are hereby appointed and constituted the attorney or attorneys irrevocable of the said grantor to execute and deliver to the said purchaser a full transfer of all policies of insurance on the buildings upon the land covered by this mortgage at the time of such sale.

And it is Agreed, That the grantee, or his executors, administrators, or assigns, or any person or persons in their behalf, may purchase at any sale made as aforesaid, and that no other purchaser shall be answerable for the application of the purchase-money; and that, until default in the performance or observance of the condition of this deed, I and my heirs and assigns may hold and enjoy the granted premises and receive the rents and profits thereof.

And for the consideration aforesaid I, _____ wife of said _____, do hereby release unto the said grantee and his heirs and assigns all right of or to both dower and homestead in the granted premises, and all rights by statutes and all other rights therein (*if grantee be unmarried cancel this clause*).

In Witness Whereof, We the said _____ (*names of grantor and wife*) hereunto set our hands and seals this _____ day of _____ in the year one thousand nine hundred and _____

(Signatures.) (Seals.)

Signed and sealed in presence of

Statutory Form.

(231.)

I _____ of _____ (*if mortgagor has no wife say here "being unmarried"*) for consideration paid, grant to _____ of _____ with mortgage covenants, to secure the payment of _____ dollars in _____ years with _____ per cent. interest per annum payable semi-annually as provided in a note of even date, the land in _____ (*description, and incumbrances if any*).

This mortgage is upon the statutory condition, for any breach of which the mortgagee shall have the statutory power of sale; (and I _____ wife of said mortgagor release to the mortgagee all rights of dower and homestead and other interests in the mortgaged premises).

Witness, etc.

MICHIGAN.

(232.)

Power of Sale.

This Indenture, Made the _____ day of _____, 19____, between _____ of _____ party of the first part, and _____, of _____, party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of _____ dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, hath granted, bargained, sold, remised, released, enfeoffed and confirmed, and by these presents doth grant, bargain, sell, remise, release enfeoff and confirm unto the said party of the second part, and to his heirs and assigns, forever, all that certain piece or parcel of land situated in the _____ of _____, in the county of _____ and State of Michigan, and described as follows, etc.: Together with the hereditaments and appurtenances thereto belonging or in any wise appertaining: To have and to hold the above bargained premises unto the said party of the second part, and to his heirs and assigns, to the sole and only proper use, benefit and behoof of the said party of the second part, his heirs and assigns, forever.

Provided, always, and these presents are upon the express condition, that if the said party of the first part shall and do well and truly pay, or cause to be paid, to the said party of the second part, the sum of _____ dollars, in _____ years from the date hereof, with interest thereon at the rate of _____ per cent. per annum, payable semi-annually, according to the terms of the promissory note bearing even date herewith, executed by said party of the first part to the said party of the second part, as collateral security, then these presents and said promissory note shall cease and be null and void.

And the said party of the first part hereby covenants and agrees to pay to said party of the second part, the money aforesaid. But in case of non-payment of the said sum of money, and the interest, or any part thereof, at the time, in the manner, and at the place above limited, and specified for the payment thereof, then the interest thereon shall become principal, and draw interest at the rate aforesaid until paid; and in case of non-payment of any principal or interest at the time limited therefor, then after _____ days, the whole amount shall become due and payable, and it shall and may be lawful for the said party of the second part, his heirs, executors, administrators or assigns, to grant, bargain, sell, release and convey the said premises, with the appurtenances, at public auction or vendue, and on such sale to make and execute to the purchaser or purchasers, his or their heirs and assigns, forever, good, ample and sufficient deed or deeds of conveyance in law, pursuant to the statute in such case made and provided, rendering the surplus moneys (if any there should be) to the said party of the first part, his heirs, executors and administrators, after deducting the costs, fees, and charges of such proceeding, vendue and sale aforesaid; and the said party of the first part covenants and agrees to pay to the said party of the second part, and his assigns, the costs and charges aforesaid, and also _____ dollars, as an attorney's or solicitor's fee, should any proceedings

be taken to foreclose this indenture at law or in equity, over and above all legally taxed costs.

In Witness, etc.

MINNESOTA.

(233.)

Power of Sale.

This Indenture, Made this _____ day of _____ in the year of our Lord one thousand nine hundred and _____, between _____ of _____, party of the first part, and _____ of _____ party of the second part: Witnesseth, that the said party of the first part being justly indebted to said party of the second part in the sum of _____ dollars, for the purpose of securing the payment of said debt, doth hereby grant, bargain, sell and convey to the said party of the second part, his heirs and assigns, all that tract or parcel of land lying and being in the county of _____ and State of Minnesota, described as follows: _____ To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the said party of the second part, his heirs and assigns, forever. And the said _____, party of the first part, does covenant with the said party of the second part, his heirs and assigns, as follows: That he is lawfully seized of said premises; second, that he has good right to convey the same; third, that the same are free from all incumbrances, and, fourth, that the said party of the second part, his heirs and assigns, shall quietly enjoy and possess the same, and that the said party of the first part will warrant and defend the title to the same against all lawful claims.

Provided, nevertheless, that if the said _____, party of the first part, his heirs, executors or administrators, shall well and truly pay, or cause to be paid, to the said party of the second part, his heirs, executors, administrators or assigns, the sum of _____ dollars, and interest according to the conditions of a certain promissory note due _____ bearing even date herewith, then this deed to be null and void; otherwise to be and remain in full force and effect. But, if default shall be made in the payment of said sum of money, or interest, or any part thereof, the said party of the first part in such case doth hereby authorize and fully empower the said party of the second part, his heirs, executors, administrators or assigns, to sell the said hereby granted premises at public auction, and convey the same to the purchaser in fee-simple, agreeably to the statute in such case made and provided, and out of the moneys arising from such sale to retain the principal and interest which shall then be due on the said note, together with all costs and charges, and also the sum of _____ dollars as attorney's fees, and to pay the overplus, if any, to the said party of the first part, his heirs, executors, administrators or assigns.

And the said party of the first part, does further covenant and agree, to and with the said party of the second part, his heirs, executors, administrators, and assigns, to pay said sum of money above specified, at the time and in the manner above mentioned, together with all costs and expenses, if

any there shall be, and, also, in case of the foreclosure of this mortgage, the sum of _____ dollars, as attorney's fees, in addition to all sums and costs allowed in that behalf by law, which said sum is hereby acknowledged and declared to be a part of the debt hereby secured, and which shall be assessed and payable as part of said debt, and that he will pay all taxes and assessments of every nature, that may be assessed on said premises, or any part thereof, previous to the day appointed by law for the sale of lands for town, city, county or state taxes.

In Testimony Whereof, The said party of the first part has hereunto set his hand, etc.

MISSISSIPPI.

(234.)

Statutory Deed of Trust.

In Consideration of _____ I convey and warrant to _____ the land described as _____. In trust to secure (*here state what is secured and all the necessary provisions*).

Witness my signature the _____ day of _____, 19____.

Trust deeds are more commonly used than mortgages. A power of sale may be inserted in either form.

MISSOURI.

(235.)

Power of Sale.

Know all Men by these Presents, That (*name and occupation of the grantor or mortgagor and his wife*) of the County of _____, in the State of Missouri, have this day, for and in consideration of the sum of _____ dollars to the said _____ in hand paid, by (*name and occupation of mortgagee*) of the County of _____ in the State of _____, the receipt whereof is hereby acknowledged, granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said _____ the following described tracts or parcels of land, situate in the County of _____, in the State of Missouri, that is to say (*here describe the premises*).

To Have and to Hold the premises hereby conveyed, with all the rights, privileges, and appurtenances thereto belonging, or in anywise appertaining unto the said _____, his heirs and assigns forever, upon this express condition:

Whereas, the said _____ on the _____ day of _____, 19____, made, executed, and delivered to the said _____ a certain promissory note, in words and figures following, to wit: (*copy of note*).

Now, if the said _____, his executors, or administrators, shall pay the sum of money specified in said note, and all the interest that may be due thereon, according to the tenor and effect of said note, then this conveyance shall be void; otherwise, it shall remain in full force and virtue in law, and the said _____, or executor, or administrator may proceed to sell the property hereinbefore described, or any part thereof, at public vendue, to

the highest bidder, at _____ in the County of _____ for cash in hand, first giving _____ days' public notice of the time, terms, and place of sale, and of the property to be sold, by advertisement _____; and upon such sale, and the payment of the purchase-money, shall execute and deliver a conveyance of the property so sold to the purchaser thereof; and any statement of fact or recital by the said _____ in such conveyance, in relation to the advertisement, sale, receipt of the purchase-money, or execution of said conveyance, shall be received as *prima facie* evidence of the truth thereof, and the said _____ shall, with the proceeds of the sale aforesaid, pay, first, the expenses of this trust, and, next, whatever may be in arrear and unpaid on said note, whether of principal or interest, and the balance (if any) shall be paid over to the said _____ or his legal representatives.

In Witness Whereof, etc.

(Signatures.) (Seals.)

MONTANA.

(236.)

This Mortgage, Made and entered into this _____ day of _____, A. D. 19____, by and between _____ of _____, mortgagor, and _____ of _____ mortgagee. Witnesseth: That the said mortgagor, for and in consideration of the sum of _____ dollars (\$ _____) in hand, paid by said mortgagee, the receipt of which is hereby acknowledged, does hereby mortgage and confirm unto the said mortgagee, his heirs and assigns, forever, the hereinafter described real estate, situate, lying and being in the _____ of _____ county of _____ and State of Montana, namely: _____ Together with all and singular the tenements, hereditaments, appurtenances, easements, water and all other rights belonging or in anywise appertaining thereto, unto the said mortgagee and his heirs and assigns.

The said mortgagor represents to and covenants with the said mortgagee, his heirs and assigns, that he will warrant and defend said premises against the lawful claims of all persons whomsoever, and _____ wife of said mortgagor hereby relinquishes all right of dower and all right of homestead, accruing or to accrue, in and to all of said premises; and the said mortgagor hereby covenants with the said mortgagee that he is lawfully seized and in possession of said premises and the same are free from all incumbrances.

Provided Always, That these presents are upon the express condition that if said mortgagor, his heirs, executors or administrators shall pay or cause to be paid to the said mortgagee, his executors, administrators or assigns, the full sum of _____ dollars, according to the tenor and effect of that certain promissory note secured hereby, a copy of which is as follows: _____ then these presents to be void, otherwise to be and remain in full force and effect.

It is Agreed, That if the mortgagor, or the maker or makers of the obligation secured by this indenture, shall fail to pay the principal or any interest as the same becomes due; or any taxes or assessments or insurance as required, or otherwise fail to comply with any one or all of the conditions of this mortgage, then all of said debt secured hereby shall become due and collectable, and all rents and profits of said property shall then immediately

accrue to the benefit of the said mortgagee; and this mortgage may be foreclosed for the full amount, together with costs, taxes, insurance, cost of abstract of title, attorney's fees, and any and all other sums advanced or expense incurred on account of the said mortgagor, for whatever purposes, and any and all advances shall draw interest at the rate of _____ per cent. per annum and be liens under this indenture. A release of this mortgage is to be made at the expense of the mortgagor, on full payment of the indebtedness secured hereby.

In Witness, etc.

NEBRASKA.

(237.)

Know all Men by these Presents, That I, _____ of _____, in consideration of _____ dollars in hand paid, do hereby grant, bargain, sell and convey unto _____ of _____ the following described real estate, situate in _____ in the county of _____ and State of Nebraska, to wit:

Together with all the appurtenances thereunto belonging; and I do hereby covenant with the said _____, his heirs and assigns, that I am lawfully seized of said premises, that they are free from incumbrance, and I do hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever.

Provided always, and these presents are upon this condition: That, whereas said _____ executed and delivered to said _____ his promissory note for the payment of said sum of _____, now if the said _____ shall well and truly pay, or cause to be paid, the said sum of money in said note mentioned, with the interest thereon, according to the tenor and effect of said note, then these presents shall be null and void. But if said sum of money, or any part thereof, or any interest thereon, is not paid when the same is due, then and in that case the whole of said sum and interest shall, and by this indenture does, immediately become due and payable without notice; or if the taxes and assessments of every nature which are assessed or levied against said premises are not paid at the time when the same are by law made due and payable, then in like manner the whole of said sum shall immediately become due and payable, without notice, at the election of the mortgagee, his executors, administrators or assigns, and in case of such default in payment of any installment of principal or interest, or of taxes, the said mortgagee, his executors, administrators or assigns may forthwith proceed to foreclose this mortgage.

Signed this _____ day of _____, A. D. 19____

NEVADA.

(238.)

See California.

NEW HAMPSHIRE.

(239.)

Know all Men by these Presents, That I, of _____, in the county of _____ and State of _____, in consideration of _____ dollars to me paid by _____ of _____, the receipt of which I do hereby acknowledge, have given, granted, bargained, sold, and conveyed, and do for myself, and my heirs, by these presents, give, grant, bargain, sell and convey unto the said _____ his heirs and assigns, forever, all that parcel, etc.:—

To Have and to Hold the aforesaid premises, with all the privileges and appurtenances thereunto belonging, to the said grantee, his heirs and assigns, to his and their use and behoof, forever. And I do covenant with the said grantee, his heirs and assigns, that I am lawfully seized in fee of the aforescribed premises; that they are free of all incumbrances; that I have good right to sell and convey the same to the said grantee in manner aforesaid; and that I and my heirs will warrant and defend the said premises to the said grantee, his heirs and assigns, forever, against the lawful claims and demands of all persons.

And I, _____, wife of said _____, in consideration aforesaid, do hereby relinquish my right of dower in the beforementioned premises. And we, and each of us, hereby release our several rights of homestead in said premises, under and by virtue of any law of this State.

Provided, nevertheless, That if the said _____, his heirs, executors or administrators, pay to the said _____, his heirs, executors, administrators or assigns, the sum of _____ dollars, in _____ years from this date, with interest thereon at the rate of _____ per cent. per annum, payable semi-annually, then this deed shall be void; otherwise to remain in full force.

In Witness, etc.

A power of sale may be inserted in the foregoing deed, for form of which see Massachusetts.

NEW JERSEY.

This Indenture, Made the _____ day of _____, 19____, between _____ of _____, party of the first part, and _____ of _____, party of the second part: Whereas the said party of the first part, in and by his certain obligation or writing obligatory, under his hand and seal duly executed, and bearing even date herewith, stands bound unto the said party of the second part in the sum of _____ dollars, payable in _____ years from said date, together with interest thereon payable semi-annually, at the rate of _____ per cent. per annum, without any fraud or further delay, as in and by the said recited obligation and condition thereof, relation to the same being had, may now fully and at large appear:

Now this Indenture Witnesseth, That the said party of the first part, as well for and in consideration of the aforesaid debt or sum of _____ dollars, and for the better securing the payment thereof unto the said party of the second part, his executors, administrators and assigns, in discharge of the said obligation above recited, as for and in consideration of the further

sum of one dollar, in specie, well and truly paid to the said party of the first part by the said party of the second part at and before the en sealing and delivery hereof, the receipt of which one dollar is hereby acknowledged, hath granted, bargained, sold, released and confirmed, and by these presents doth grant, bargain, sell, release and confirm, unto the said party of the second part, his heirs and assigns, all that (*description of mortgaged premises*); together with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof: To have and to hold the said hereditaments and premises above granted, or intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever. Provided always, nevertheless, that if the said party of the first part, his executors, administrators or assigns, do and shall well and truly pay, or cause to be paid, unto the said party of the second part, his executors, administrators or assigns, the aforesaid debt or sum of _____ dollars on the day and at the time hereinbefore mentioned and appointed for the payment thereof, together with lawful interest for the same, in like money, in way and manner hereinbefore specified therefor, without any fraud, or further delay, and without any deduction, defalcation, or abatement to be made for or in respect of any taxes, charges, or assessments whatsoever; that then, and from thenceforth, as well this present indenture and the estate hereby granted as the said obligation above recited shall cease, determine, and become absolutely null and void, to all intents and purposes; anything hereinbefore contained to the contrary thereof in any wise notwithstanding.

In Witness, etc.

NEW MEXICO.

(240.)

For form of mortgage see Illinois.

Trust deeds are also in use.

NEW YORK.

(241.)

Statutory Form with Power of Sale.

This Indenture, Made the _____ day of _____ in the year nineteen hundred and _____ between _____ of _____, party of the first part, and _____ of _____, party of the second part: Whereas the said _____ is justly indebted to the said party of the second part in the sum of _____ dollars, lawful money of the United States, secured to be paid by his certain bond or obligation, bearing even date herewith, conditioned for the payment of the said sum of _____ dollars, on the _____ day of _____, nineteen hundred and _____, and the interest thereon to be computed from _____ at the rate of _____ per centum per annum, and to be paid in _____ instalments on _____.

It being expressly agreed that the whole of the said principal sum shall become due after default in the payment of interest, taxes, or assessments, as hereinafter provided:

Now this Indenture Witnesseth, That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, and also for and in consideration of one dollar paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant and release unto the said party of the second part, and to his heirs (*or successors*) and assigns forever (*here describe premises*), together with the appurtenances, and all the estate and rights of the party of the first part in and to said premises.

To Have and to Hold the above granted premises unto the said party of the second part, his heirs and assigns, forever.

Provided Always, That if the said party of the first part, his heirs, executors or administrators, shall pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, that then these presents, and the estate hereby granted, shall cease, determine, and be void.

And the said party of the first part covenants with the party of the second part as follows:

First. That the party of the first part will pay the indebtedness as hereinbefore provided; and if default be made in the payment of any part thereof, the party of the second part shall have power to sell the premises therein described, according to law.

Second. That the party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee.

Third. And it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said party of the second part after default in the payment of any instalment of principal or of interest for _____ days, or after default in the payment of any tax or assessment for _____ days after notice and demand.

In Witness Whereof, The said party of the first part hath hereunto set his hand and seal the day and year first above written.

In the presence of

NORTH CAROLINA.

(242.)

See Massachusetts.

NORTH DAKOTA.

(243.)

Statutory Form.

This Mortgage, Made the _____ day of _____, in the year _____, by A. B., of _____ mortgagor, to C. D. of _____, mortgagee, witnesseth, That the mortgagor mortgages to the mortgagee the following described real estate, viz: _____ (*description*), as security for the payment to him

of _____ dollars, on or before the _____ day of _____, in the year _____, with interest thereon at the rate of _____ per cent. per annum, (or as security for the payment of an obligation, describing it, etc.),

The mortgage may also contain a power of sale.

See also South Dakota.

Every mortgage must contain the post office address of the mortgagee, and give amount, rate of interest, and when and where due. Assignment must give post office address of assignee.

OHIO.

(244.)

Know all Men by these Presents, That A. B. and C. D. his wife of _____, in consideration of _____ dollars to them paid by E. F. of _____, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell and convey to the said E. F., his heirs and assigns, forever, (*description*), and all the estate, title and interest of the said grantors either in law or in equity of in and to the said premises, together with all the privileges and appurtenances to the same belonging, and all the rents, issues and profits thereof; to have and to hold the same to the only proper use of the said grantee, his heirs and assigns, forever. And the said A. B. for himself and for his heirs, executors and administrators does hereby covenant with the said grantee, his heirs and assigns, that he is the true and lawful owner of the said premises, and has full power to convey the same; that the title so conveyed is clear, free and unincumbered; and further that he does warrant and will defend the same against all claim or claims of all persons, whomsoever.

Provided, nevertheless, That if the said A. B. shall pay, or cause to be paid the certain promissory note (*here give description or copy of mortgage note*) then these presents shall be void. In witness whereof, the said A. B. and C. D., his wife, who hereby releases her right and expectancy of dower in said premises, have hereunto set their hands this _____ day of _____, A. D. 19____.

OKLAHOMA.

(245.)

Statutory Form.

Know all Men by these Presents, That _____ and _____, his wife, of _____ in the county of _____ and State of _____, parties of the first part, have mortgaged, and hereby mortgage, to _____ of _____, party of the second part, the following described real estate and premises situated in _____ county of _____ and State of Oklahoma, to wit: _____, with all the improvements thereon, and appurtenances thereunto belonging, and warrant the title to the same. This mortgage is given to secure the principal sum of _____ dollars, with interest thereon at the rate of _____ per centum per annum, payable _____ annually, from _____

according to the terms of a certain promissory note described as follows, to wit: _____.

Dated this _____ day of _____, 19____.

OREGON.

(246.)

See California.

PENNSYLVANIA.

(247.)

This Indenture, Made the _____ day of _____, in the year of our Lord one thousand nine hundred and _____, between _____ of _____, (hereinafter called the mortgagor), of the one part, and _____ of _____, (hereinafter called the mortgagee), of the other part.

Whereas, The said mortgagor, in and by his obligation or writing obligatory under his hand and seal duly executed, bearing even date herewith, stands bound unto the said mortgagee in the sum of _____ dollars lawful money of the United States of America, conditioned to keep and maintain at all times, until the full discharge of the said obligation, a policy or policies of insurance in good and approved company or companies, duly assigned as collateral security to the mortgagee or his executors, administrators or assigns, to an amount not less than _____ dollars, upon the buildings on the premises hereinafter described, and conditioned for the payment of the just sum of _____ dollars lawful money as aforesaid, together with interest payable _____ at the rate of _____ per cent. per annum, without any fraud or further delay; and for the production to the said mortgagee or his executors, administrators or assigns, on or before the _____ day of _____ of each and every year, of receipts for all taxes and water rates of the current year assessed upon the mortgaged premises.

Provided, however, and it is thereby expressly agreed, that if at any time default shall be made in the payment of interest as aforesaid, for the space of _____ days after any _____ payment thereof shall fall due, or in the prompt and punctual maintenance of said insurance so assigned as aforesaid, or in such production to the mortgagee or his executors, administrators or assigns, on or before the _____ day of _____ of each and every year, of such receipts for such taxes and water rates of the current year upon the premises mortgaged, then and in such case the whole principal debt aforesaid shall, at the option of the said mortgagee or his executors, administrators or assigns, become due and payable immediately; and payment of said principal debt, and all interest thereon, may be enforced and recovered at once, any thing therein contained to the contrary notwithstanding. And provided further, however, and it is thereby expressly agreed, that if at any time thereafter, by reason of any default in the maintenance of said insurance, or in payment, either of said principal sum at maturity, or of said interest, or in production of said receipts for taxes and water rates, within the time specified, a writ of *feri facias* is properly issued upon the judgment obtained upon said obligation, or by virtue of said warrant of attorney, or

a writ of *scire facias* is properly issued upon this indenture of mortgage, an attorney's commission for collection, viz: _____ per cent., shall be payable, and shall be recovered in addition to all principal and interest, besides costs of suit, as in and by the said recited obligation and the condition thereof, relation being thereunto had may more fully and at large appear.

Now this Indenture Witnesseth, That the said mortgagor, as well for and in consideration of the aforesaid debt or principal sum of _____ dollars, and for the better securing the payment of the same, with interest as aforesaid, unto the said mortgagee, his executors, administrators and assigns, in discharge of the said recited obligation, as for and in consideration of the further sum of one dollar unto him in hand well and truly paid by the said mortgagee at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents does grant, bargain, sell, alien, enfeoff, release and confirm unto the said mortgagee, his heirs and assigns: _____ (*description of mortgaged premises*). Together with all and singular the ways, waters, water-courses, rights, liberties, privileges, improvements, hereditaments and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof. To have and to hold the said lands, hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said mortgagee, his heirs and assigns, to and for the only proper use and behoof of the said mortgagee, his heirs and assigns forever. Provided always, nevertheless that if the said mortgagor, his heirs, executors, administrators or assigns, do and shall well and truly pay, or cause to be paid, unto the said mortgagee, his executors, administrators or assigns, the aforesaid debt or principal sum of _____ dollars on the day and time hereinbefore mentioned and appointed for payment of the same, together with interest as aforesaid, and shall produce to the said mortgagee or his executors, administrators or assigns, on or before the _____ day of _____ of each and every year, receipts for all taxes and water rates of the current year assessed upon the mortgaged premises, and shall keep and maintain said insurance so assigned as aforesaid, without any fraud or further delay, and without any deduction, defalcation, or abatement to be made of any thing, herein mentioned to be paid or done, that then, and from thenceforth, as well this present indenture, and the estate hereby granted, as the said recited obligation shall cease, determine and become void, any thing hereinbefore contained to the contrary thereof, in any wise notwithstanding. And provided also, that it shall and may be lawful for the said mortgagee, his executors, administrators or assigns, when and as soon as the principal debt or sum hereby secured shall become due and payable as aforesaid, or in case default shall be made for the space of _____ days in the payment of interest on the said principal sum, after any _____ payment thereof shall fall due, or in the prompt and punctual maintenance of said insurance so assigned as aforesaid, or in case there shall be default in the production to the said mortgagee or his executors, administrators or assigns, on or before the _____ day of _____ of each and every year, of such receipts for such taxes and water rates of the cur-

rent year assessed upon the mortgaged premises, to sue out forthwith a writ or writs of *scire facias* upon this indenture of mortgage, and to proceed thereon to judgment and execution, for the recovery of the whole of said principal debt, and all interest due thereon, together with an attorney's commission, for collection, viz: _____ per cent., besides costs of suit, without further stay, any law, usage or custom to the contrary notwithstanding.

In Witness Whereof, The said parties to these presents have hereunto interchangeably set their hands and seals. Dated the day and year first above written.

Sealed and delivered in the presence of us

Every mortgage or assignment must be accompanied by a certificate setting forth the precise address of the mortgagee or assignee or other person entitled to receive interest.

(248.)

Bond and Warrant Referred To In Foregoing Mortgage.

Know all Men by these Presents, That I, _____ (hereinafter called the obligor), am held and firmly bound unto _____, (hereinafter called the obligee), in the sum of _____ dollars, lawful money of the United States of America, to be paid to the said obligee, his certain attorney, executors, administrators or assigns: to which payment well and truly to be made, I do bind and oblige myself and my heirs, executors and administrators, firmly by these presents. Sealed with my seal. Dated the _____ day of _____ in the year of our Lord one thousand nine hundred and _____

The Condition of this Obligation is such, That if the above-bounden obligor, his heirs, executors or administrators, or any of them, shall and do well and truly keep and maintain at all times, until the full discharge of this obligation, a policy or policies of insurance, in good and approved company or companies, duly assigned as collateral to the obligee or his executors, administrators or assigns, to an amount not less than _____ dollars, upon the buildings on the premises mortgaged by the mortgage securing this obligation, and shall and do well and truly pay, or cause to be paid unto the above-named obligee, his certain attorney, executors, administrators or assigns, the just sum of _____ dollars, lawful money as aforesaid, together with interest payable _____ at the rate of _____ per cent. per annum, without any fraud or further delay; and shall produce to the said obligee or his executors, administrators or assigns, on or before the _____ day of _____ of each and every year, receipts for all taxes and water rates of the current year assessed upon the mortgaged premises; then the above obligation to be void, or else to be and remain in full force and virtue: Provided, however, and it is hereby expressly agreed, that if at any time default shall be made in payment of interest as aforesaid, for the space of _____ days after any _____ payment thereof shall fall due, or in the prompt and punctual maintenance of said insurance so assigned as aforesaid, or in such production to the obligee or his executors, administrators or assigns, on or before the _____ day of _____ of each and every year, of such receipts for such taxes and water rates of the current year upon the premises mortgaged, then and in such

case the whole principal debt aforesaid, shall, at the option of the said obligee, his executors, administrators or assigns, become due and payable immediately, and payment of said principal debt, and all interest thereon, may be enforced and recovered at once, any thing herein contained to the contrary notwithstanding. And provided further, however, and it is hereby expressly agreed, that if at any time hereafter, by reason of any default in the maintenance of said insurance, or in payment, either of said principal sum, at maturity, or of said interest, or in production of said receipts for taxes and water rates, within the time specified, a writ of *feri facias* is properly issued upon the judgment obtained upon this obligation, or by virtue of the warrant of attorney hereto attached, or a writ of *scire facias* is properly issued upon the accompanying indenture of mortgage, an attorney's commission for collection, viz: _____ per cent., shall be payable, and shall be recovered in addition to all principal and interest then due, besides costs of suit.

Sealed and Delivered in the presence of us

(Signature and Seal.)

To _____, Esq., Attorney of the Court of Common Pleas, at Philadelphia, in the County of Philadelphia, in the State of Pennsylvania, or to any other Attorney of the said Court, or any other Court there or elsewhere.

Whereas, I, _____, in and by a certain obligation, bearing even date herewith, do stand bound unto _____, in the sum of _____ dollars lawful money of the United States of America, conditioned to keep and maintain at all times, until the full discharge of the said obligation, a policy or policies of insurance, in good and approved company or companies, duly assigned as collateral to the obligee or his executors, administrators or assigns, to an amount not less than _____ dollars, upon the buildings on the premises mortgaged by the mortgage securing the said obligation, and conditioned for the payment of the just sum of _____ dollars lawful money as aforesaid, together with interest payable _____ at the rate of _____ per cent. per annum, and for the production to the obligee or his executors, administrators or assigns, on or before the _____ day of _____ of each and every year, of receipts for all taxes and water rates of the current year assessed upon the premises described in the mortgage accompanying said obligation: Provided, however, and it is thereby expressly agreed, that if at any time default shall be made in payment of interest as aforesaid, for the space of _____ days after any payment thereof shall fall due, or in the prompt and punctual maintenance of said insurance so assigned as aforesaid, or in such production to the obligee or his executors, administrators or assigns, on or before the _____ day of _____ of each and every year, of such receipts for such taxes and water rates of the current year assessed upon the premises described in the mortgage accompanying said obligation, then and in such case the whole principal debt aforesaid, shall, at the option of the said obligee, his executors, administrators or assigns, become due and payable immediately, and payment of said principal debt, and all interest thereon, may be enforced and recovered at once, any thing therein contained to the contrary notwithstanding. And provided further, however, and it is thereby expressly agreed, that if at any

time thereafter, by reason of any default in the maintenance of said insurance, or in payment, either of said principal sum, at maturity, or of said interest, or in production of said receipts for taxes and water rates, within the time specified, a writ of *feri facias* is properly issued upon the judgment obtained upon said obligation, or by virtue of the warrant, or a writ of *scire facias* is properly issued upon the accompanying indenture of mortgage, an attorney's commission for collection, viz: _____ per cent., shall be payable, and shall be recovered in addition to all principal and interest then due, besides costs of suit. These are to desire and authorize you, or any of you, to appear for me, my heirs, executors, or administrators, in the said court or elsewhere, in an appropriate form of action there or elsewhere brought or to be brought against me, my heirs, executors or administrators, at the suit of the said obligee, his executors, administrators or assigns, on the said obligation, as of any term or time past, present, or any other subsequent term or time there or elsewhere to be held, and confess judgment thereupon against me, my heirs, executors or administrators, for the sum of _____ dollars lawful money of the United States of America, debt, besides costs of suit, and an attorney's commission of _____ per cent. in case payment has to be enforced by process of law as aforesaid, by *Non sum informatus, Nihil dicit*, or otherwise, as to you shall seem meet: And for your, or any of your so doing, this shall be your sufficient warrant. And I do hereby for myself, my heirs, executors and administrators, remise, release, and forever quitclaim unto the said obligee, his certain attorney, executors, administrators and assigns, all and all manner of error and errors, misprisions, misentries, defects and imperfections whatever, in the entering of the said judgment, or any process or proceedings thereon or thereto, or anywise touching or concerning the same.

In Witness Whereof, I have hereunto set my hand and seal this _____ day of _____ in the year of our Lord one thousand nine hundred and _____

Sealed and Delivered in the presence of us

(Signature and Seal.)

RHODE ISLAND.

(249.)

Power of Sale.

Know all Men by these Presents, That I, _____ of _____, herein-after called the mortgagor, in consideration of _____ dollars, to me paid by _____ of _____, hereinafter called the mortgagee, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said mortgagee, and his heirs and assigns forever (*here describe the mortgaged premises*).

To Have and to Hold, the aforegranted premises, with all the privileges and appurtenances thereunto belonging, unto and to the use of the said mortgagee, and his heirs and assigns, forever.

And I, the said mortgagor, do hereby, for myself and for my heirs, executors, and administrators, covenant with the said mortgagee and his heirs

and assigns that I am lawfully seized in fee simple of the said granted premises; that the same are free from all incumbrances; that I have good right, full power and lawful authority to sell and convey the same in manner as aforesaid; that the said mortgagee and his heirs and assigns shall by these presents at all times hereafter peaceably and quietly have and enjoy the said premises, and that I, the said mortgagor, will, and my heirs, executors and administrators shall, warrant and defend the same to the said mortgagee and his heirs and assigns forever against the lawful claims and demands of all persons. And for the consideration aforesaid I, _____ wife of the said _____, do hereby release all right of dower in and to the said granted premises unto the said mortgagee and his heirs, and assigns, forever.

Provided, nevertheless, and this conveyance is made upon the express condition, that if the said mortgagor, his heirs, executors, administrators or assigns, shall pay unto the said mortgagee or his executors, administrators or assigns, the sum of _____ dollars, wherefor the said mortgagor has made his negotiable promissory note for said aggregate sum, bearing even date with these presents, and made payable to the order of _____ in _____ years from the date hereof, with interest thereon at the rate of _____ per centum, per annum payable semi-annually, _____ until said principal sum is paid, whether at or after maturity, and all instalments of interest in arrear, whether before or after maturity, to bear interest at the rate aforesaid until paid, and shall also pay all taxes and assessments of every kind levied or assessed upon or in respect of said premises, then this deed, as also said promissory note, shall become and be absolutely void to all intents and purposes whatsoever.

But if Default shall be made in the payment of the said principal sum or of said interest, at the time or times and in the manner aforesaid, or of the taxes or assessments aforesaid, as the same become payable, or of any or either of them, or of any part thereof, or if breach shall be made of the covenant for insurance hereinafter contained, then it shall be lawful for the said mortgagee, his executors, administrators, or assigns, to sell, together or in parcels, all and singular, the premises hereby granted or intended to be granted, or any part or parts thereof, and the benefit and equity of redemption of the said _____ and his heirs, executors, administrators and assigns, therein, at public auction upon the premises, and to bid for and become the purchaser or purchasers at any such sale (and no other purchaser or purchasers shall be answerable for the application of the purchase-money), first giving notice of the time and place of sale by publishing the same at least once each week for three successive weeks in some newspaper published in _____ with power to adjourn such sale from time to time, provided that the publishing of said notice shall be continued, together with a notice of the adjournment or adjournments, at least once each week in the same newspaper; and in his or their own name or names, or as the attorney or attorneys of the said _____ (for that purpose by these presents duly authorized and appointed with full power of substitution and revocation), to make, execute and deliver to the purchaser or purchasers at such sale a good and sufficient deed or deeds of said premises in fee simple, and to receive the proceeds of such sale or sales, and from such proceeds to retain all sums hereby se-

cured, whether then due or to fall due thereafter, or the part thereof then remaining unpaid, and also the interest then due on the same, together with all expenses incident to such sale or sales, or for making deeds hereunder, and for fees of counsel and attorneys, and all costs or expenses incurred in the exercise of said powers, and all taxes, assessments and premiums for insurance, if any, either theretofore paid by the said mortgagee, his executors, administrators or assigns, or then remaining unpaid, upon said granted premises, rendering and paying the surplus of said proceeds of sale if any there be, over and above the amounts so to be retained as aforesaid, together with a true and particular account of such sale or sales, expenses and charges, to the said _____, his heirs, executors, administrators or assigns, which sale or sales made as aforesaid shall forever be a perpetual bar both in law and equity against the said _____, his heirs, executors, administrators and assigns, and all persons claiming said premises, so sold, by, from or under him, them, or any of them.

And I, the said mortgagor, for myself and for my heirs, executors, administrators and assigns, hereby covenant with the said mortgagee, and his heirs, executors, administrators and assigns, that I and they will upon request execute such deed or deeds confirmatory of said sale or sales as may be required.

And furthermore, I, the said mortgagor, for myself and for my heirs, executors, administrators and assigns, hereby covenant with the said mortgagee, and his executors, administrators and assigns, that insurance against loss by fire shall be kept and maintained on the buildings on the premises aforesaid, in such office or offices as the said mortgagee, and his executors, administrators or assigns, shall approve, in a sum not less than _____ dollars, and that the policy or policies of such insurance shall be assigned and transferred, or made payable in case of loss, to the said mortgagee, or his executors, administrators or assigns, as collateral security hereto, and in default thereof, hereby agree that the said mortgagee, or his executors, administrators or assigns, may effect such insurance in the name of the said mortgagor, and his heirs and assigns, payable in case of loss to the said mortgagee, and his executors, administrators or assigns, and that the premium or premiums paid therefor shall be a further charge upon said granted premises, secured by these presents.

In Witness Whereof, We have hereunto set our hands and seals this _____ day of _____ in the year of our Lord one thousand nine hundred and _____

Signed and Sealed in presence of

STATE OF RHODE ISLAND, &c.

COUNTY OF _____

In _____ on the _____ day of _____, A. D. 19____, before me personally appeared _____ and _____, his wife, to me known and known by me to be the parties executing the foregoing instrument, and acknowledged said instrument, by them executed, to be their free act and deed.

Discharge, endorsed on Mortgage.

I, the undersigned, having received full payment and satisfaction of the within mortgage recorded in the records of land evidence in the _____

of _____ in the State of Rhode Island, in Book Number _____, at page _____, hereby cancel and discharge the same. And I covenant to and with the person making said payment, that I am the present owner of said mortgage.

In Witness Whereof, etc.

SOUTH CAROLINA.

(250.)

THE STATE OF SOUTH CAROLINA.

To all whom these Presents may concern, I (*name, residence, and occupation of grantor or grantors*), send greeting:

Whereas, I, the said _____, in and by a certain bond or obligation bearing date the _____ stand firmly held and bound unto (*name of grantee*) in the penal sum of _____ dollars, conditioned for the payment of the full and just sum of _____ as in and by the said bond and condition thereof, reference being thereunto had, will more fully appear.

Now Know all Men, That I, the said _____, in consideration of the said debt and sum of money aforesaid, and for the better securing the payment thereof to the said _____ according to the condition of the said bond, and also in consideration of the further sum of three dollars to me, the said _____, in hand well and truly paid by the said _____ at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release unto the said _____: (*describe carefully the land and premises granted*).

Together with all and singular the rights, members, hereditaments, and appurtenances to the said premises belonging, or in anywise incident or appertaining.

To Have and to Hold all and singular the said premises unto the said _____, his heirs and assigns forever. And I do hereby bind myself, my heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said _____, his heirs and assigns, from and against me and my heirs, executors, administrators, and assigns, lawfully claiming, or to claim the same, or any part thereof.

And it is agreed, by and between the said parties, that the said mortgagor, his heirs, executors, or administrators, shall and will forthwith insure the house and buildings on said lot, and keep the same insured, from loss or damage by fire, and assign the policy of insurance to the said _____ his executors, administrators, or assigns; and in case he or they shall at any time neglect or fail so to do, then the said mortgagee, his executors, administrators, or assigns, may cause the same to be insured in their own name, and reimburse themselves for the premium and expense of such insurance under the mortgage.

Provided Always, nevertheless, and it is the true intent and meaning of the parties to these presents, that if I the said _____ do and shall well and truly pay, or cause to be paid, unto the said _____ the said debt or

sum of money aforesaid, with the interest thereon, if any shall be due, according to the true intent and meaning of said bond and condition thereunder written, then this deed of bargain and sale shall cease, determine, and be utterly null and void, otherwise it shall remain in full force and vigor.

And it is agreed, by and between the said parties, that the said mortgagor shall be entitled to hold and enjoy the said premises until default of payment shall be made.

Witness my hand and seal this _____ day of _____, in the year of our Lord one thousand nine hundred and _____ and in the _____ year of the sovereignty and independence of the United States of America.

SOUTH DAKOTA.

Power of Sale.

(251.)

This Mortgage made this _____ day of _____ in the year 19____, by _____ of _____, mortgagor, to _____ of _____ mortgagee, whose post office address is _____

Witnesseth that said mortgagor hereby mortgages to said mortgagee the following described premises situated in the county of _____ and State of South Dakota, to wit: (*description*) as security for the payment to said mortgagee at _____ of the principal sum of _____ dollars and interest thereon at _____ per cent. per annum from date _____ payable _____ annually on _____ according to the tenor and effect of _____ promissory notes _____ bearing date even herewith, made by said mortgagor to said mortgagee, described as follows, to wit: one for _____ dollars, due _____, one for _____ dollars due _____, etc.

Said mortgagor further agrees to pay all taxes and assessments that may be levied on said premises, before the same shall become delinquent, and to keep the buildings upon said premises, safely insured for the benefit of the mortgagee for _____ dollars against loss by fire, and deliver the insurance policies to said mortgagee. In case of the mortgagor's failure to pay said taxes or assessments before becoming delinquent or to pay insurance premiums for insurance on said buildings, said mortgagee or assignee may do so, and the amounts so paid, with interest at _____ per cent. from date of payment, shall be added to and deemed a part of the money secured by this mortgage. Said mortgagor hereby relinquishes his rights of homestead in said premises, and warrants that he is the owner in fee of said premises, and that the same are free from all incumbrances.

In case default shall be made in the payment of said principal sum of money or any part thereof or interest thereon at the time or times above specified for payment thereof, or in case of nonpayment of any taxes, assessments or insurance as aforesaid, or of the breach of any covenant or agreement herein contained, then and in either case, the whole, principal and interest, of said note—shall, at the option of the holder thereof, immediately become due and payable, and this mortgage may be foreclosed by action, or by advertisement as provided by Chapter 28 of the Code of Civil

Procedure of the Revised Codes (1903) of the State of South Dakota; and this paragraph shall be deemed as authorizing and constituting a power of sale as provided in said chapter.

Signed and delivered in presence of _____

TENNESSEE.

Statutory Deed of Trust.

(252.)

For the purpose of securing to _____ a note of this date, due at _____, with interest from this date at _____ per cent. per annum, I hereby convey to _____, in trust, the following property, (*describing it*). And if said note is not paid at maturity, I hereby authorize _____ to sell the property herein conveyed, (*stating the manner, place of sale, notice, etc.*); to execute a deed to the purchaser, to pay off the amount herein secured, with interest and costs, and to hold the remainder subject to my order.

For fuller form see Virginia.

TEXAS.

(253.)

Trust Deed (Excluding Homestead).

STATE OF TEXAS

COUNTY OF _____

Know all Men by these Presents, That we, _____ and _____, his wife, of _____ County, Texas, for and in consideration of the sum of _____ dollars cash, to us in hand paid by _____ of _____, and the trust hereinafter set forth, have granted sold and conveyed, and by these presents do grant, sell and convey unto the said _____ as trustee, and his substitutes, hereinafter mentioned, the following described property, to wit: _____ The grantors herein covenant that the above described land is not their homestead, nor is any part thereof, and that they do not reside on the same, and have no intention of making the same their homestead; that their homestead consists of: _____

The grantors herein bind and obligate themselves to pay all taxes assessed against said property first above described as they accrue, so as to avoid penalties; and that the failure to do so shall authorize the holder or holders of the note hereinafter described to make such payment, and the amount so expended shall be and become a charge against the grantors and said property in favor of the holder or holders of said note, and bear interest from the time of such payment at the rate of _____ per cent. per annum, which as well as said sums shall be paid to the holder or holders of said note at the maturity thereof, according to its terms at _____, all of which payments shall be secured by this instrument as a lien on said land first above described, and in the event of a sale of the same the party making such sale shall pay the same to said holder or holders.

To Have and to Hold the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said _____ as trustee, and his substitutes forever. And we do hereby bind ourselves, and our heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said _____ as trustee, and his substitutes and their assigns hereunder, forever against every person whomsoever lawfully claiming or to claim the same or any part thereof.

This conveyance, however, is intended as a trust for the better securing of _____, of _____ in the payment of _____ dollars, as evidenced by one certain promissory note for _____ dollars payable _____ and executed by the grantors herein, bearing even date herewith, payable to the order of said _____ at _____ with interest at the rate of _____ per cent. per annum from this date until paid, payable semi-annually as it accrues at _____, and if not so paid to be added to the principal, and bear interest at the rate of _____ per cent. per annum, and also providing in substance, among other things, for ten per cent. attorney's fees, and that a failure to pay said interest as it accrues or any instalment thereof shall mature said note, at the option of the holder or holders thereof; and said note and the provisions thereof are made a part of this instrument for all purposes so as to be covenants hereof.

Upon payment of said promissory note this conveyance is to become null and void and of no further force or effect, and shall be released at the cost and expense of the said grantors; but in case of the failure or default in the payment of said promissory note at the maturity of the same, or of any instalment of interest due and payable thereunder, then the said trustee is by these presents fully authorized and empowered, and it is made his special duty at the request of the holder or holders of said note at any time made after the maturity of the same, or after default in the payment of interest thereon as aforesaid, to sell the said above described premises to the highest bidder for cash at the court house door of said county, at such time, and after first giving such notice as may be required by law at the time such sale is made hereunder, for sales under instruments of this character; and after said sale, as aforesaid, to make to the purchaser or purchasers thereof, a good and sufficient deed in law conveying the lands and premises so sold by warranty deed or deeds, and to receive the proceeds of said sale, and the same to apply to the payment of said note, the interest thereon accrued, and the expenses of executing said trust, including five per cent. commission to said trustee, holding the remainder thereof subject to the order of the said grantors or their legal representatives or assigns; and it is hereby specially provided that, should the said trustee, from any cause whatever, fail or refuse to act, or become disqualified from acting as such trustee, then the holder or holders of said note shall have full power to appoint a substitute in writing, who shall have the same powers as are hereby delegated to said trustee, and the additional powers to adopt such act or acts as said trustee may have performed hereunder, if he so desires, and upon the failure, disqualification, or refusal of said substitute to act, the holder or holders of said note shall have power to appoint other substitute trustees

hereunder in writing, any one of whom shall have the same powers as above delegated to said trustee and substitute trustees, with the additional power to adopt any act or acts of any or all previous substitute trustees hereunder, until some one is secured who will execute the powers herein conferred; and do by these presents fully and absolutely ratify and confirm any and all acts which the said trustee or any one or more of his substitutes as herein provided for may do in the premises by virtue thereof, and do hereby agree that all recitals in the deed or deeds executed hereunder shall be received in all courts of law and equity as full and sufficient proof of the acts having been performed and facts existing as therein recited; and that it shall be presumed from the execution of a deed hereunder that all prerequisites have been performed.

Witness our hands at _____ this _____ day of _____, 19__

UTAH.

(254.)

Statutory Form.

A. B. of _____ mortgagor hereby mortgages to C. D. of _____, for the sum of _____ dollars, the following tract of land in _____ county, Utah, (*description*). This mortgage is given to secure the following indebtedness (*here state amounts and form of indebtedness, maturity, rate of interest, by whom payable, and where*). The mortgagor agrees to pay all taxes and assessments on said premises, and the sum of _____ dollars attorney's fee in case of foreclosure.

Witness the hand of said mortgagor this _____ day of _____, A. D.

VERMONT.

(255.)

See Connecticut.

VIRGINIA.

(256.)

Trust Deed.

This Deed, Made this _____ day of _____, 19__, between _____ of _____ county of _____ and state of _____, of the first part, and _____ of _____, and _____ of _____, of the second part, witnesseth, that the said party of the first part doth grant unto the said parties of the second part the following property, to wit, etc.:

In trust to secure to _____ of _____ in the State of _____ the payment of the sum of _____ dollars in _____ years from this date with interest at the rate of _____ per cent. per annum thereon, according to the terms of a promissory note made by the said party of the first part to said _____ for said sum.

In the event that default shall be made in the payment of the above mentioned sum or of an instalment of interest thereon, as it becomes due and payable, then the said trustees, or either of them, on being required so to do

by the said _____, his executors, administrators or assigns, shall sell the property hereby conveyed. And it is covenanted and agreed between the parties aforesaid that in case of a sale the same shall be made after first advertising the time, place and terms thereof for _____ days in some newspaper published in the said county of _____, and upon the following terms, to wit: for cash as to so much of the proceeds as may be necessary to defray the expenses of executing this trust, the fees for drawing and recording this deed, if then unpaid, and to discharge the amount of money then payable upon the said note; and if there be any residue of said purchase-money, the same shall be made payable at such time, and be secured in such manner, as the said _____, his executors, administrators or assigns, shall prescribe and direct, or in case of his or their failure to give such direction at such time and in such manner as the said trustees, or either of them, shall think fit. The said party of the first part covenants to pay all taxes, assessments, dues, and charges upon the said property conveyed so long as he, or his heirs or assigns shall hold the same, and hereby waives the benefit of all homestead exemption as to the debt secured by this deed.

If no default shall be made in the payment of the above mentioned debt, then, upon the request of the party of the first part, a good and sufficient deed of release shall be executed to him at his own proper costs and charges.

Witness the following signature and seal.

WASHINGTON.

(257.)

Know all Men by these Presents, That _____ of _____, party of the first part, in consideration of _____ dollars paid by _____ of _____, party of the second part, the receipt whereof is hereby acknowledged, doth hereby give, grant, bargain, sell, convey and mortgage unto the said _____, the following described real estate, situate in the County of _____ and State of Washington, to wit: _____. To have and to hold the granted premises, with all the privileges and appurtenances thereto belonging unto the said _____, and his heirs and assigns to their own use and behoof forever. And he hereby covenants to defend the title to the granted premises against the lawful claims of all persons.

Provided nevertheless, and these presents are upon the express condition, that if the said _____, his executors, administrators or assigns shall pay unto the grantee, or his heirs, executors, administrators or assigns, the sum of _____ dollars, according to the tenor and terms of _____ certain promissory notes made by the grantor, each for the sum of _____ dollars, dated _____ Washington, _____, 19____, and payable respectively on _____ and _____, with interest at _____ per cent. per annum, payable _____ annually, and shall perform and observe all covenants and conditions hereinafter contained, then this mortgage and the notes hereby secured shall be void, otherwise to remain in full force and effect.

It is Agreed, That time shall be material, and the essence of this mortgage, and if default be made in the payment of the notes hereby secured or

of the interest thereon, or any part thereof, when due, then said notes, except interest thereon for unexpired time, shall, at the option of the owner thereof, become at once due and payable without further notice, and suit in foreclosure of this mortgage may be commenced at once; and in the judgment and decree of such foreclosure, a reasonable attorney's fee shall be included in the judgment, and in case such foreclosure suit is settled before judgment is recorded therein, such attorney's fee shall nevertheless be paid; and if the debt and interest or any instalment thereof secured by this mortgage are not paid when due, such sums so overdue shall bear interest at the rate of _____ per cent. from maturity until paid.

In Witness Whereof, etc.

WEST VIRGINIA.

(258.)

See Virginia.

WISCONSIN.

(259.)

Power of Sale.

This Indenture, Made this _____ day of _____ in the year of our Lord one thousand nine hundred and _____, between (*name of grantor*) of the County of _____, State of _____, of the first part, and (*name of the grantee*) of the County of _____ and State of _____ of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of _____ dollars to him in hand paid by the party of the second part, the receipt of which is hereby acknowledged, has granted, bargained, and sold, and by these presents doth grant, bargain, sell, and convey unto the said party of the second part, and to his heirs and assigns forever, all the following described real estate situate, lying, and being in the County of _____, State of Wisconsin (*here describe the land or premises granted*).

To Have and to Hold the above bargained premises with the appurtenances, unto the said party of the second part, his heirs and assigns forever. Provided always, and these presents are upon this express condition, that if the said _____ party of the first part, his heirs, executors, administrators, and assigns, shall well and truly pay, or cause to be paid, to the said party of the second part, his heirs, executors, administrators, or assigns the sum of _____ according to the condition of a certain promissory note bearing date _____ executed by _____ the said party of the first part, to the said party of the second part, as collateral security, then these presents and the said note shall cease and be null and void.

And the said _____ doth further covenant and agree, that he will pay all taxes and assessments of every nature that may be assessed on said premises, previous to the day appointed in pursuance of any law of the State for sale of lands for taxes. And also will pay the sum of _____ dollars, as Solicitor's fees, in case of foreclosure of this mortgage by reason of the non-performance of any of the conditions hereof by said party of

the first part. And in case of the non-payment of said sum, or any part thereof, at the time or times above limited for the payment thereof, or in case of the non-payment of any taxes that may be assessed on said premises in manner aforesaid; then, and in either case, it shall be lawful for the said party of the second part, his heirs, executors, administrators, or assigns, and the said party of the first part, does hereby covenant and agree, and by these presents empower and authorize the said party of the second part, his heirs, executors, administrators, or assigns, to grant, bargain, sell, release, and convey the said premises, with the appurtenances thereunto belonging, at public auction or vendue, and on such sale to make and execute to the purchaser or purchasers, his, her, or their heirs and assigns forever, good, ample, and sufficient deeds of conveyance in the law, pursuant to the statute in such cases made and provided; and out of the moneys arising from such sale to retain the principal and interest which shall then be due on the said note together with the costs and charges, and the said sum of _____ dollars, Solicitor's fees, as aforesaid; rendering the surplus money, if any there be, to the party of the first part, his heirs, executors, administrators, or assigns, after deducting the costs of such vendue as aforesaid.

In Witness Whereof, etc.

WYOMING.

(260.)

Statutory Form.

_____ of _____, mortgagor, to secure the payment of (*amount of indebtedness, when due, rate of interest, and whether secured by note or otherwise*) doth hereby mortgage to _____ of _____ mortgages, the following described real estate (*description*) situate in _____ county, State of Wyoming. The mortgagor agrees to pay all taxes and assessments on said premises, to keep the buildings thereon insured in a sum not less than \$_____ during the life of this mortgage, payable to the mortgagee, and in case he shall fail to pay said taxes and assessments, and to keep said premises insured as aforesaid, the mortgagee may insure said building or buildings, and pay said taxes, and all amounts so paid shall be added to and considered as part of the above indebtedness hereby secured and shall draw interest at the same rate. In case of default of payment of either interest or principal, then the whole indebtedness herein secured shall become due and payable, and the mortgagee may proceed, pursuant to law, to foreclose on said property; and in case of foreclosure, the mortgagor hereby agrees to pay all costs of the same, including an attorney's fee of \$_____.

(*And where the right of homestead is released, add the following*):

Hereby relinquishing and waiving all rights under and by virtue of the homestead exemption laws of the State.

Dated this _____ in the presence of _____

SPECIAL CLAUSES.

In addition to the provisions found in the foregoing forms, special clauses are sometimes inserted, of which some of the most common are the following:

(261.)

Payments Before Maturity.

The mortgagor is hereby permitted to pay the debt hereby secured, or any part of it, not less than _____ dollars at any one time, whenever, and at such time or times as he may choose (or upon the days when any instalment of interest shall fall due); and the mortgagee hereby agrees to accept such payment or payments, and thereupon interest shall cease upon such part of the debt as may be so paid; and upon full payment of said debt, with all interest up to the date of actual payment, he will discharge this mortgage.

(262.)

Payment by Instalments.

Provided nevertheless, That if the said grantor, his heirs, executors, administrators or assigns shall pay unto the said grantee, his executors, administrators or assigns, the sum of _____ dollars, with interest at the rate of _____ per cent. per annum, by equal yearly instalments of _____ dollars each, of which the first is to be paid on the _____ day of _____, 19____, and a like instalment on every subsequent _____ day of _____ thereafter until said principal sum is fully paid, and interest on said principal sum or so much thereof as shall from time to time remain unpaid, on the _____ days of _____ and _____ in each year, then these presents shall be void.

(263.)

Partial Releases.

And provided further, and it is hereby understood and agreed, that the mortgagee, his executors, administrators or assigns will at any time at the request of the mortgagor, his heirs, executors, administrators or assigns, release and discharge from the operation of this mortgage any part of the lands (or any of the lots) herein described and conveyed, upon being paid therefor at the rate of _____ per square foot, and that the amounts so paid shall be endorsed upon the mortgage note as partial payments of the mortgage debt hereby secured.

(264.)

Future Advances.

Provided nevertheless, That if the said grantor, his heirs, executors, administrators or assigns shall pay unto said grantee, his executors, admin-

istrators or assigns, the sum of _____ dollars loaned to him at the time of the execution of these presents, and such further sums of money, not exceeding in all, including this present loan, the sum of _____ dollars, as the said grantee may advance to the said grantor on the security of this mortgage, or which may become owing by the grantor to the grantee at any time hereafter during the continuance of this mortgage, with interest on said sums loaned or advanced or owing as aforesaid, at the rate of _____ per cent. per annum payable semi-annually then these presents shall be void.

(265.)

Prior Mortgage.

If the premises are subject to a prior mortgage the following clauses should be inserted:

After the covenant against incumbrances:

“Excepting a mortgage upon which _____ dollars of principal remains unpaid, given by _____ to _____ dated _____ and recorded in _____ County Deeds, Book _____, page _____.”

Also in the condition of the mortgage:

“And shall not commit or suffer any breach of any covenant or condition contained in said prior mortgage.”

And in the power of sale after the references to default in the performance of the conditions of the mortgage:

“Or of the conditions of said prior mortgage.”

(266.)

Interest on Prior Mortgage.

And the said mortgagor hereby covenants that he, his heirs, executors, administrators and assigns will at all times during the continuance of this mortgage punctually pay the interest on said prior mortgage to which said premises are subject, as and when the same shall fall due, and will at all times at the request of the mortgagee, his executors, administrators or assigns, produce for his or their inspection the receipt for the last payment of interest due on said prior mortgage.

DOMINION OF CANADA.

(267.)

We give below forms of mortgages in use in Quebec, Ontario, New Brunswick and Manitoba. In the other Provinces mortgages drawn under the “Short Forms of Conveyance Act” may be used. The essential features of such mortgages are shown in the form given for Ontario, but additional stipulations may be inserted as shown in the Manitoba form. In Alberta, Saskatchewan and Manitoba where the Torrens Law is in force forms under the “Real Property Act” are also used. Except in New Brunswick and British Columbia, the mortgage is proved for registration by the oath of a subscribing witness, instead of being acknowledged by the mortgagor, but in Nova Scotia and Newfoundland mortgagor may acknowledge under oath.

(268.)

Mortgage in Use in the Province of Quebec.

Before Mtre _____, the undersigned notary public for the Province of Quebec, practicing at the City of Montreal, appeared _____, of _____, hereinafter styled the "Lender"; of the one part; and _____, of _____, hereinafter styled the "Borrower"; of the other part; who have entered into the following agreement:

Loan and Repayment.

The said lender has this day loaned to the said borrower, thereof accepting, the sum of _____, which the borrower acknowledges to have received to his satisfaction, whereof quit. Which capital sum the borrower obliges himself to pay to the lender on the _____ day of _____, one thousand nine hundred and _____, and not sooner without the written consent of the lender, and until repayment thereof to pay to the lender interest thereon at the rate of _____ per centum per annum, reckoned from this date, and payable half-yearly on the _____ day of the months of _____ and _____ in each year, whereof the first payment will become due on the _____ day of _____ next; with interest on all overdue interest at the rate aforesaid from the date of maturity until recovered by the lender.

Hypothec.

To secure the reimbursement of the said capital sum of _____ and the interest thereon the borrower specially charges and hypothecates in favor of the lender (*here describe the property mortgaged*).

Indemnity and Additional Hypothec.

In the event of the property hereinabove hypothecated or any part thereof being sold at forced sale before the complete reimbursement of this loan, or dealt with in any way that will require the lender to receive his claim before the expiration of the term herein stipulated, or should the lender legally take any proceedings at law for the recovery of any sum hereunder in principal or interest or for the fulfilment of any condition hereunder, the lender will be entitled to receive, and the borrower now obliges himself to pay an indemnity of five per centum upon and in addition to the amount of the loan then due in principal, interest and accessories.

And to secure the payment to the lender of the indemnity above stipulated, interest on interest, if any arise, and the accessories of this loan, such as insurance premiums, taxes, registration fees, or other sums which may be expended by the lender by reason of this loan, or to preserve the hypothec hereby created, and for the fulfilment of all the conditions of this loan, the borrower specially hypothecates the above described property for a further sum of _____

Conditions.

The present loan is thus made subject to the following conditions, to the fulfilment whereof the borrower binds and obliges himself namely:

1. To make the payments of the said capital sum of _____ and the interest thereon, at the office in the said City of Montreal (*or otherwise*) of the said lender, in gold coin, at its present standard of value, and of its present weight and fineness.

2. To pay regularly all municipal taxes and assessments on the property hypothecated and exhibit the receipts therefor to the lender before the first day of November in each year.

3. To pay all fees, legal and notarial, connected with the present loan, including a copy for the lender, costs of registration, renewals of registration and sheriff's notices, and to furnish the lender within thirty days of its execution with a copy of every deed of mutation affecting said property.

4. As additional security for the said loan, and until repayment thereof, to insure and keep insured against loss by fire with an insurance company or companies approved by the lender, the buildings on the said property, for a sum not less than the amount loaned, and to transfer to the lender the policy of such insurance and indemnity which may become due thereunder, and also to deliver to the lender the receipts for the renewal of such insurance twenty-four hours before the expiry of the existing insurance; in default whereof the lender at his option will have the right to insure at the expense of the borrower, without prejudice to the right of the lender to exact the immediate repayment of the loan as hereinafter stipulated.

In case of loss by fire, any sums received for insurance by the lender shall not be deemed to have been received in reduction of the loan unless a formal discharge be given by the lender, who will have the right to impute any sum so received, in whole or in part, upon the loan, or to pay the same, in whole or in part, either to the borrower or for reconstruction or repairs.

5. To keep the buildings on said property in a good state of repair, and allow the lender access to inspect the same from time to time if desired.

6. To pay any tax which may be imposed on the capital or interest of the present loan.

7. That all sums which the lender may disburse for insurance premiums, taxes, or otherwise, by reason of this loan, or to preserve the hypothec hereby created, will bear interest at the said rate from the date of disbursement until repayment thereof.

8. Should the borrower fail to make any interest payment for fifteen days after its maturity or to keep in force the insurance and deliver the renewal receipts, as hereinbefore stipulated, or to pay regularly and at maturity the taxes and assessments on said property and exhibit the receipts as hereinbefore provided, or to pay on demand any tax which may be imposed on the principal or interest of this loan, or should the borrower permit to be registered against the said property any memorial which might give rise to a lien for work done or materials furnished, the lender may, if he choose, exact the immediate repayment of the loan with the accrued interest, without demand, notice, or formality whatever.

9. In case the said capital sum is not paid at maturity the lender shall not be obliged to accept payment thereof after maturity without three months' previous written notice, or the payment of three months' interest at the said rate upon the capital amount due, in lieu of such notice.

The present loan is indivisible and its performance may be enforced by the said lender in whole from each of the heirs or legal representatives of the borrower conformably to Article 1123 of the Civil Code.

The titles and papers connected with the said property shall remain in the hands of the said lender until repayment of the said loan, and any discharges given by the said lender, in connection with the present deed, will be made before the notary of the lender.

Declarations of the Borrower.

The borrower makes the following declarations, which are stipulated as essential to this loan, and which he covenants to be true in all respects:

That the said property belongs to him absolutely, is commuted, and is free and clear of all encumbrances.

(Insert any further declarations which may be agreed upon.)

(Insert dower clause.)

Whereof Acts.

Done and Passed at the said City of Montreal, on this _____ day of _____, one thousand nine hundred and _____, and of record in the office of the undersigned notary under number _____ thousand _____ hundred and _____

And after due reading hereof, the said parties signed in presence of said notary.

(269.)

Mortgage in Use in the Province of Ontario.

This Indenture, Made the _____ day of _____, one thousand nine hundred and _____, in pursuance of the "Short Forms of Mortgages Act," between _____ of _____, hereinafter called the mortgagor, and _____, his wife, and _____ of _____, hereinafter called the mortgagee, witnesseth, that in consideration of _____ dollars of lawful money of Canada now paid by the said mortgagee to the said mortgagor, the receipt whereof is hereby acknowledged, the said mortgagor doth grant and mortgage unto the said mortgagee, his heirs, executors, administrators and assigns forever

All and Singular, That certain parcel or tract of land and premises, situate, lying and being in the _____ in the County of _____, in the Province of Ontario and Dominion of Canada, being composed of (*here describe the mortgaged premises*). And the said _____, wife of the said mortgagor, hereby bars her dower in the said lands.

Provided, This mortgage to be void on payment of _____ dollars of lawful money of Canada with interest at _____ per cent. per annum, as follows: The said principal sum of _____ on the _____ day of _____, A. D. 19____, and in the meantime and so long as the said principal money or any part thereof shall remain due, as well after maturity as before, the interest at the rate aforesaid on the whole unpaid principal money, such interest to be computed from the _____ day of _____ in the present year A. D. 191____, and to be paid half-yearly on the _____ day of the months

of _____ and _____ in each year the first payment of such interest to be made on the _____ day of _____ now next ensuing A. D. 191____; together with interest at the rate aforesaid upon all arrears of interest remaining unpaid after the maturing thereof until fully paid, and taxes and performance of statute labor. And if the said mortgagor, his heirs, executors, administrators or assigns, or some one or more of them, shall and will, well and truly do, observe, perform, fulfill and keep according to the true intent and meaning of these presents, all and every the covenants, agreements, provisos, provisions, terms and stipulations in this indenture contained and on his and their part to be kept, observed and performed, all and every of which said covenants, agreements, provisos, provisions, terms, and stipulations the said mortgagor, notwithstanding any statute, law or custom to the contrary, charges upon the said lands and premises hereby granted and mortgaged, or intended so to be.

Provided, That in default of the payment of the interest hereby secured the principal hereby secured shall forthwith at the option of the mortgagee become due and payable (without demand) in the like manner and with the same consequences as if the time hereinbefore mentioned for the payment of such principal money had fully come and expired.

The said mortgagor covenants with the said mortgagee that the mortgagor will pay the mortgage money and interest and observe the above provisos; that the mortgagor has a good title in fee simple to the said lands; and that he has the right to convey the said lands to the said mortgagee; and that on default the mortgagee shall have quiet possession of the said lands, free from all incumbrances. And that the said mortgagor will execute such further assurances of the said lands as may be requisite; and that the said mortgagor has done no act to incumber the said lands; and that the said mortgagor will insure the buildings on the said lands to the amount of not less than _____ dollars currency; and the said mortgagor doth release to the said mortgagee all his claims upon the said lands, subject to the said provisos.

Provided, That the said mortgagee, his heirs, executors, administrators, devisees or assigns, on default of payment for one calendar month, may, without giving any notice whatever to said mortgagor, his heirs, executors, administrators or assigns, enter on and lease or sell the said lands for cash or on credit, with full power upon any such sale to make any stipulations as to title evidence or commencement of title or otherwise as the said mortgagee, his heirs, executors, administrators, devisees or assigns shall deem proper, and the purchaser or purchasers, under the said power shall not be bound to see to the propriety or regularity of any such sale.

Provided, That the mortgagee may distrain for arrears of interest; provided, that until default of payment the mortgagor shall have quiet possession of the said lands.

Provided always, and it is hereby further declared and agreed that if default should be made in the payment of the said principal money or any part or parts thereof the said mortgagor, his heirs, executors, administrators or assigns shall not be entitled to pay the same without either giving three months' previous notice in writing to the party entitled to receive the said

principal money, or such part or parts thereof in the payment of which default has been made, or paying in advance (and as a forfeit) three months' interest on the same at the rate of aforesaid.

In Witness Whereof, The said parties hereto have hereunto set their hands and seals the day and year first above written. (In duplicate.)

(Signatures.) (Seals.)

Signed, Sealed and Delivered (having been first read over and explained) in presence of (Signature of Two Witnesses).

COUNTY OF _____, To Wit:

I, _____, of the City of _____, in the County of _____, make oath and say as follows:

1. That I was personally present and did see the within mortgage and duplicate thereof duly signed, sealed and executed by _____, the parties thereto.

2. That the said mortgage and duplicate were executed by the said parties at the said City of _____

3. That I know the said parties.

4. That I am a subscribing witness to the said mortgage and duplicate.

Sworn before me at the City of _____ in the County of _____ this _____ day of _____, A. D. 191____

A Commissioner for taking Affidavits in and for the Province of Ontario.

(270.)

Mortgage in Use in the Province of New Brunswick.

Know all Men by these Presents, That we _____ of _____, hereinafter called the mortgagor, together with _____, his wife, in consideration of _____ dollars to them paid by _____ of _____, hereinafter called the mortgagee, the receipt whereof is hereby acknowledged, do hereby grant, bargain and sell unto the said _____, and his heirs and assigns, all that *(here describe the mortgaged premises)*, together with all the estate, right, title, dower, right of dower, property, claim and demand whatsoever, both at law and in equity of them the said _____ and _____, in the said lands and premises.

To Have and to Hold the said lands and premises, with their appurtenances, unto the said _____, and his heirs and assigns to the use of the said _____, and his heirs and assigns forever.

Provided Always, That if the mortgagor shall pay unto the mortgagee the sum of _____ in _____ years from the date of these presents, together with interest on said sum payable semi-annually at the rate of _____ per cent. per annum on the _____ days of _____ and _____ in each year during said term then this indenture shall be void.

And the mortgagor hereby covenants with the mortgagee:

1. That if default shall be wholly or partially made in payment of the said sum hereby secured or the said interest, contrary to the aforesaid proviso for the payment of the same, the mortgagee may at any time there-

after, on giving _____ months' notice in writing to the mortgagor, or on notice being published for _____ month in a newspaper published in _____ in the county aforesaid, absolutely sell the said lands and premises and their appurtenances, or any part thereof, either by public auction or private contract, or part thereof one way and part the other, for such price or prices as to the mortgagee shall seem reasonable. And all contracts, conveyances and assurances which shall be entered into or executed by the mortgagee for the purpose of effecting any such sale shall be valid, notwithstanding the mortgagor shall not join therein or assent thereto, and any purchaser at such sale need not ascertain or enquire whether such notice of sale shall actually have been given, and shall be under no responsibility as to the application of the proceeds of such sale.

2. That in case of any such sale, the mortgagee may, out of any moneys received by the mortgagee from any such sale or sales, pay all the expenses of making out the title and completing such sale paid by the mortgagee, and interest thereon, and all sums of money, costs and charges incurred in or about the execution of the foregoing trusts and powers and the recovery of the amount secured hereby; and afterwards retain whatever amount of the said principal sum and interest shall remain unpaid, and shall then pay the surplus (if any) as personal estate to the said _____.

3. And for further security the said mortgagor doth hereby for himself and his aforesaid covenant and agree to and with the said mortgagee and his aforesaid, to forthwith insure and keep insured during the continuance of this security at his or their own cost and expense, against loss or damage by fire, the buildings now or hereafter erected on the said premises for the benefit of the said mortgagee or his aforesaid so expressed in the body of such policy or policies, or by endorsement thereon, in a sum not less than _____ in some reputable fire insurance office or offices approved of by the said mortgagee or _____ aforesaid, and forthwith deliver same and all renewal receipts therefor to him or them. If the said mortgagor or his aforesaid neglect or decline to insure or keep insured as aforesaid, or deliver said policy or policies and renewal receipts as aforesaid, the said mortgagee or his aforesaid, or any of them, may effect and continue such insurance and pay the premiums therefor and add same to the sum hereby secured, which, with interest at the rate aforesaid, shall be repayable on demand, and until payment with interest as aforesaid shall be a further charge hereunder. In case of loss or damage by fire the insurance moneys to be received shall be applied either towards the payment of the moneys hereby secured, whether due or not, or towards repairing the damages of said fire, or part one way and part the other, at the option of the said mortgagee or his aforesaid.

4. That when used herein the word "mortgagor" shall mean and include the said _____, and his heirs, executors, administrators and assigns, and the word "mortgagee" shall mean and include the said _____, and his executors, administrators and assigns.

In Witness Whereof, the said _____ and _____ have hereunto set their hands and seals the _____ day of _____, A. D. 19____

Signed, Sealed and Delivered in presence of

PROVINCE OF NEW BRUNSWICK, }
COUNTY OF _____ } ss.

On the _____ day of _____, A. D. 19____, at _____ in the said County of _____ before me (*name and official title*) personally came and appeared _____ Grantor within named, and acknowledged that he executed the foregoing instrument for the use and purposes therein mentioned.

And the said _____, wife of the said _____, being by me then and there examined separate and apart from her said husband, acknowledged that she executed the same freely and voluntarily and without any fear, threat or compulsion of, from or by her said husband.

In Testimony Whereof, I have hereunto set my hand and _____ Seal at _____ the day and year last aforesaid.

NOTARY PUBLIC.
(or other official.)

(271.)

Mortgage in Use in the Province of Manitoba.

This Indenture, Made in duplicate the _____ day of _____, one thousand nine hundred and _____, in pursuance of the act respecting short forms of indentures: Between _____ of _____, hereinafter called the "mortgagor" of the first part; and _____, of _____, hereinafter called the "mortgagee" of the second part; whereas the mortgagor is seized of and entitled to the legal and equitable estate in fee simple in possession in his own right in and to the lands hereinafter mentioned and has so represented to the mortgagee and the mortgagee relying thereon, has agreed to lend to the mortgagor the amount hereinafter mentioned upon the security of the said estate.

Now therefore this Indenture Witnesseth, That in consideration of the sum of _____ dollars, now paid by the mortgagee to the mortgagor (the receipt whereof is hereby by him acknowledged) the mortgagor doth grant and mortgage unto the mortgagee, his _____ and assigns forever, all and singular the lands following, that is to say: _____ (*here describe the mortgaged premises*). Provided this mortgage to be void on payment of the sum of _____ dollars of lawful money of Canada, with interest at _____ per centum per annum, and compound interest as hereinafter provided; the whole thereof in gold coin, if demanded, as follows: (*Here specify the time of payment or the time of payment of each instalment, if payable in instalments*), with interest at the rate aforesaid, to be paid half-yearly, on each _____ day of _____ and _____ after the date hereof on so much principal money hereby secured as shall from time to time remain unpaid till the whole of the principal money and interest is paid, whether before or after the same becomes due; but after default interest at the rate aforesaid shall accrue and be payable from day to day; and taxes and performance of statute labor. The first payment of interest to be made on the _____ day of _____, A. D. 19____.

And it is further agreed that on default in payment of any instalment of interest, such interest shall at once become principal and bear interest at the

rate aforesaid, which interest shall be payable from day to day and shall itself bear interest at the rate aforesaid if not paid prior to the next gale day, it being agreed that all interest, as well that upon principal as upon interest, is to be compounded at each day mentioned for payment of interest.

And it is further agreed that the taking of a judgment or judgments on any of the covenants herein contained shall not operate as a merger of said covenants or affect the mortgagee's right to interest at the rate and times aforesaid.

Provided, That in the event of non-payment of the said principal, or any part thereof, at the times the same falls due under the terms of this mortgage, it is agreed that the mortgagee or his assigns shall not be required to accept payment of said principal moneys without receiving six months' previous notice in writing, or without being paid a bonus equal to six months' interest in advance on the principal money so in default.

The mortgagor covenants with the mortgagee that the mortgagor will pay the mortgage money and interest, and observe the above proviso; that the mortgagor has a good title in fee simple to the said lands; and that on default the mortgagee shall have quiet possession of the said lands free from all encumbrances; and that he has the right to convey the said lands to the mortgagee; and that the mortgagor will execute such further assurance of the said lands as may be requisite; and that the mortgagor has done no act to encumber the said lands; and that the mortgagor will insure the buildings on the said lands to the amount of their full insurable value, and this covenant to insure is to apply to all buildings which are now or may hereafter be erected on the said lands.

Provided, That the mortgagee may himself effect such insurance without any further consent of the mortgagor.

It is also hereby agreed that all moneys hereby received by virtue of any policy or policies may, at the option of the mortgagee either be forthwith applied on suspense account, or in or towards substantially rebuilding, reinstating and repairing the said premises, or in or towards the payment of the last installment of principal falling due under and by virtue of these presents, and, in case of a surplus, in or towards payment of the instalment next preceding in point of time of payment, and so on until the whole of the principal hereunder shall be paid, and in case of surplus then in or towards payment of the interest; or may be paid over in whole or in part to the mortgagor or his assigns and in such case shall not be credited on the mortgage account.

And the mortgagor doth release to the mortgagee all his claims upon said land subject to the said proviso; provided that on default of payment of any portion of the moneys hereby secured, the whole of the moneys hereby secured shall, at the option of the mortgagee, become payable, and that all subsequent interest shall fall due and be payable from day to day.

And for the purpose of better securing the punctual payment of the interest on the said principal sum the mortgagor doth hereby attorn tenant to the mortgagee for the said lands at a yearly rental equivalent to the annual interest secured hereby, to be paid half-yearly on each _____ day of _____ and _____, the legal relation of landlord and tenant being

hereby constituted between the mortgagee and mortgagor. Provided, also, that the mortgagee may at any time after default in payment hereunder enter into and upon the said lands or any part thereof and determine the tenancy hereby created without giving any notice to quit, but it is agreed that neither the existence of this clause or anything done by virtue thereof shall render the mortgagee mortgagee in possession so as to be accountable for any moneys except those actually received.

And further, that if default shall be made in payment of any part of the said principal at any day or time hereinbefore limited for the payment thereof, it shall and may be lawful for the mortgagee, and the mortgagor doth hereby grant full power and license to the mortgagee to enter, seize and distrain upon any goods upon the said lands or any part thereof, and by distress warrant to recover by way of rent reserved as in the case of a demise of the said lands, as much principal as shall from time to time be or remain in arrear or unpaid, together with all costs, charges and expenses attending such levy or distress as in like cases of distress for rent.

Provided, That the mortgagee on default of payment for one calendar month, may on one week's notice, enter on and lease or sell the said lands. Provided, also, that should default be continued for two months, the mortgagee shall, without giving any notice, be entitled to all powers, rights and privileges to which, under the proviso immediately next preceding, he would be entitled if the notice therein mentioned were given. The mortgagee may lease or sell as aforesaid without entering into possession of the said lands. When under the terms hereof a notice is necessary, such notice may be effectually given either by leaving the same with a grown up person on the said lands, if occupied or by placing it thereon or on any part thereof, if unoccupied, or, at the option of the mortgagee by publishing the same once in some newspaper published in the Province of Manitoba, and shall be sufficient though not addressed to any person or persons by name or designation and notwithstanding any person or persons to be affected thereby may be unknown, unascertained, or under disability, and such notice shall be sufficient though not otherwise addressed than "to whom it may concern." And that the mortgagee or his assigns may sell any of the said lands on such terms as to credit or part cash and part credit and otherwise as shall appear to them most advantageous, and for such prices as can reasonably be obtained, and in event of a sale on credit, or for part cash and part credit the mortgagee not to be accountable for or charged with any moneys until actually received, and that sales may be made from time to time of portions of the said lands to satisfy interest or parts of the principal overdue, leaving the principal or balance thereof to run at interest payable as aforesaid, and may make any stipulations as to title or evidence, or commencement of title, or otherwise as he shall deem proper. And may buy in or rescind, or vary any contract for sale of any of the said lands, and resell without being accountable for loss occasioned thereby. And for any of the said purposes may make and execute all agreements, assurances and conveyances they shall think fit. And that the purchaser at any sale hereunder shall not be bound to see to the propriety or regularity thereof. And that no want of notice or of publication when required hereby, or other impropriety or irregularity,

shall invalidate any sale or lease hereunder, or purporting to be made hereunder, but the vendor alone shall be responsible, and the above powers, together with all other powers in this mortgage contained, may be exercised by assigns of the mortgagee, and against the heirs, executors, administrators and assigns of the mortgagor.

It is also agreed between the mortgagor and the mortgagee, that the mortgagee may pay all taxes, rates or levies which are now or may hereafter be levied, charged or imposed against said lands, and any levy or mortgage tax or income tax imposed or that may be imposed on this mortgage or on the mortgagee in respect of this mortgage or the moneys hereby secured or in respect of said lands, and may also pay any liens, charges or encumbrances which may exist on said lands at any time during the existence of this security, and any moneys for insurance against damage by fire, tempest, lightning or for hail insurance of crops on said lands, and may also pay costs and charges of and incidental to bringing the said lands under the act entitled "The Real Property Act," and any amendment thereto, or any act in substitution thereof, and all sums so paid, together with all costs, charges and expenses which may be incurred in the taking, recovering and keeping possession of said lands or inspecting the same and generally in any other proceedings taken to realize the moneys hereby secured or perfecting the title to the said lands, shall be a charge upon the mortgaged property in favor of the mortgagee and shall be payable forthwith to the mortgagee or assigns, with interest at the rate of eight per centum per annum till paid, and in default of payment thereof the whole sum hereby secured shall, at the option of the mortgagee, immediately become due and payable, and the power of sale hereby given shall be exercisable in addition to all other remedies. And the mortgagor doth hereby agree to pay to the mortgagee or assigns any sum or sums of money which, in addition to the said principal sum hereby secured, the mortgagee may pay for the purpose of satisfying and paying off any balance of purchase price, mortgage, lien, charge, encumbrance or other claim that may be outstanding against the property in order to perfect the title to the said lands or any part thereof and make this mortgage a first charge and encumbrance thereon, (the propriety of paying out any said further sum to be a matter upon which the decision of the mortgagee shall be absolute and final), any such sum or sums so paid to be repaid to the mortgagee by the mortgagor at the time fixed hereby for the next payment of interest maturing under this mortgage after the time of such payment, with interest at the rate of eight percentum per annum, and in default, the power of sale hereby given shall be exercisable in addition to all other remedies. In the event of the money hereby advanced, or any part thereof, being applied to the payment of any charge or encumbrance, the mortgagee shall stand in the position and be entitled to all the equities of the person or persons so paid off, whether any such charge or encumbrance have or have not been discharged.

And that the mortgagee may at his discretion at all times release any part or parts of the said lands, or any other security for the moneys hereby secured, either with or without any consideration therefor, and without being accountable for the value thereof or for any moneys except those

actually received by him, and without thereby releasing any other of the said lands or any of the covenants herein contained.

And that upon the mortgagor, or those claiming under him committing any act of waste upon said lands, or doing any other thing by which the value of the said lands shall or may be diminished, or failing to remain in the actual personal possession of the said lands, or making default as to any of the covenants or provisions herein contained the principal and interest hereby secured shall, at the option of the mortgagee, forthwith become due and payable.

And it is hereby declared and agreed that all erections, machinery, plant, buildings and improvements, fixed or otherwise, now or hereafter put upon the said premises, are and shall, immediately upon being put on the said premises, become fixtures and a part of the realty and form a part of this security.

The mortgagor agrees that neither the execution or registration of this mortgage, nor the advance in part of the moneys hereby secured shall bind the mortgagee to advance the said moneys or any unadvanced portion thereof. It also agreed that if the sum hereby secured, or any part thereof, shall not be advanced to the mortgagor at the date hereof, the mortgagee may advance the same in one or more sums to or on behalf of the mortgagor at any future date or dates, and the amount of such advances when so made shall be secured hereby and repayable with interest as above provided, and shall be considered and treated as having been so secured and advanced as at the date hereof.

And the mortgagor covenants with the mortgagee or his assigns that the mortgagee or his assigns at such time or times as they may deem necessary, and without the concurrence of any person, may make such arrangements for the repairing, finishing and putting in order any building or improvements on the mortgage premises, and for inspecting, taking care of, leasing, collecting the rents of and managing generally the mortgaged property as they may deem expedient, and all reasonable expenses, costs or charges, including allowance for the time and service of any officer of mortgagee or other person appointed for any of the above purposes shall be forthwith payable to the mortgagee or his assigns, and shall be a charge upon the mortgaged property and shall bear interest at the rate of eight per centum per annum until paid.

Provided also that upon and after default in payment of any of the moneys hereby secured or payable under these presents from time to time, the mortgagee shall be entitled to send an inspector or agent to inspect and report upon the value, state and condition of the mortgaged land at the mortgagor's expense, and all expenses incurred and paid in so doing, together with all costs and charges between solicitor and client which the mortgagee may incur or pay in enforcing or attempting to enforce all or any of the remedies and powers given hereby or subsisting for the recovery of the moneys hereby secured, or any part thereof, whether the proceedings taken prove abortive or not, and of, in and about taking, recovering and keeping or attempting to procure possession of the said lands, or any part thereof, shall form and be a charge upon the said lands, and payable forthwith to

the mortgagee, and shall bear interest at the rate aforesaid from the time of payment of the same as upon principal money advanced upon the security of these presents.

Provided also that all moneys, payments, costs, charges and expenses whatsoever, which are by these presents charged or to be charged or chargeable upon the said lands shall be considered as mortgage money and interest, and default in payment of the same or any part thereof from time to time shall be a breach of the covenant for payment of the mortgage moneys and interest herein contained and shall also entitle the mortgagee to exercise the power of sale and all other powers and remedies contained in these presents or subsisting for recovery of the mortgage moneys and interest or any part thereof from time to time.

It is further agreed that the heirs, executors, administrators and assigns of the respective parties are bound by the covenants and stipulations herein contained and that all covenants herein contained are to be construed as both joint and several.

In Witness Whereof the said parties have hereunto set their hands and seals.

Signed, Sealed and Delivered in the presence of
(Having been first read over and explained.)

MANITOBA

_____ To Wit:

I, _____, of the _____ of _____ in the province of Manitoba—(Occupation)—make oath and say

1. That I was personally present and did see the within instrument and duplicate duly signed, sealed and executed by each of the parties thereto.

2. That the said instrument and duplicate were executed at _____

3. That I know the said parties and am satisfied that _____ is of the full age of twenty-one years.

4. That I am a subscribing witness to the said instrument and duplicate.

Sworn before me at the _____ of _____ in the Province of Manitoba, this _____ day of _____ in the year of our Lord 19____.

A Commissioner for taking Affidavits in B. E., Etc.

MISCELLANEOUS FORMS.

(272.)

A Promissory Note, to be Secured by Mortgage.

\$ _____, 19____
_____ years after date, for value received, I promise to pay to _____,
_____ dollars, with interest at the rate of _____ per cent. per annum,
payable semi-annually.

This note is secured by a deed of mortgage of even date herewith from _____ to _____ to be recorded in _____ Registry of Deeds.

Witness.

(Signature.)

(273.)

Bond, to be Secured by a Mortgage.

Know all Men by these Presents, That I (*name of obligor*) of _____ in the County of _____ and State of _____, am held, bound, and obliged unto (*name of obligee*) of _____ in the County of _____ and State of _____ in the sum of (*penalty usually twice as much as the actual debt*), to be paid to the said (*the obligee*) his executors, administrators, or assigns, and to this payment I hereby bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal, this _____ day of _____ in the year _____

The Condition of the above obligation is such, that if I, the said (*name of the obligor*), or my heirs, executors, or administrators, shall pay or cause to be paid unto the said (*name of the obligee*) his heirs or assigns the sum of (*here insert the amount of the debt or sum to be secured*) on the _____ day of _____ in the year _____, with interest at _____ per cent., payable six months from the date hereof, and every six months afterwards, until the said sum is paid, then the above obligation shall be void and of no effect, and otherwise it shall remain in full force. And I further agree and covenant, that if any payment of interest be withheld, or delayed for _____ days after such payment shall fall due, the said principal sum and all arrearage of interest thereon, shall be and become due immediately on the expiration of _____ days, at the option of the said (*obligee*) or his executors, administrators or assigns.

Witness.

(*Signature and Seal.*)

This bond is secured by a deed of mortgage of even date, made by said _____ to said _____ and to be recorded in _____ Registry of Deeds.

(274.)

Assignment of Mortgage.—Massachusetts Form.

Know all Men by these Presents, That I (*name, residence, and occupation of the assignor*) the mortgagee (or assignee of the mortgagee) named in a certain mortgage deed, given by (*name, residence, and occupation of the mortgagor*) to (*name of mortgagee*) to secure the payment of _____ dollars, dated the _____ day of _____ in the year of our Lord nineteen hundred and _____, recorded in the _____ registry of deeds for the County of _____ lib. _____ fol. _____ in consideration of the sum of _____ dollars to me paid by (*name, residence, and occupation of buyer and assignee*) the receipt whereof is hereby acknowledged, do hereby sell, assign, transfer, set over and convey unto said (*name of assignee*) and his heirs and assigns, said mortgage deed, the real estate thereby conveyed, and the promissory note, debt, and claim thereby secured, and the covenants therein contained.

To Have and to Hold the same to him the said (*name of assignee*) and his heirs and assigns, to his and their use and behoof forever; subject nevertheless to the conditions herein contained, and to redemption according to law.

In Witness Whereof, I, the said _____ have hereunto set my hand and seal this _____ day of _____ in the year of our Lord nineteen hundred and _____.

(Signature.) (Seal.)

Executed and Delivered in Presence of

(275.)

Assignment of Mortgage, in use in Michigan.

Know all Men by these Presents, That I (*name, residence, and occupation of assignor*) of the first part, for and in consideration of the sum of _____ lawful money of the United States of America, to me in hand paid by (*name, residence, and occupation of assignee*) of the second part, at or before the enscaling or delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, a certain indenture of mortgage, bearing date the _____ day of _____, one thousand nine hundred and _____, made by and between (*here describe carefully the mortgage assigned, giving the names of the parties and the description of the premises mortgaged, as described in the mortgage*). And recorded in the office of the Register of Deeds of the County of _____, and State of Michigan, in Liber _____ of Mortgages, at page _____ with all and singular the premises therein mentioned and described, together with the (*note, bond, or debt*) or obligation therein also mentioned, and the moneys now due, or to become due, and the interest that may hereafter grow due thereon.

To Have and to Hold the same unto the party of the second part, his heirs and assigns forever, subject only to the proviso in the said indenture of mortgage mentioned. And I do hereby authorize and appoint the said party of the second part, my true and lawful attorney, irrevocable, in my name, or otherwise, but at his proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the sum or sums of money now due and owing, or hereafter to become due and owing, upon the said note and mortgage; and in case of payment, to give acquittance or other sufficient discharge, as fully as I might or could do if these presents were not made; and I do hereby for myself and my heirs, executors, and administrators, covenant, promise, and agree to and with the said party of the second part, that there is due upon the said note and mortgage the sum of _____ and that I have good right and lawful authority to grant, bargain, and sell the same in manner aforesaid.

Signed, sealed and delivered the _____ day of _____, 19____

In Presence of

(Signature.) (Seal.)

The Illinois form is substantially the same as that of Michigan. The New York form also is similar, but does not include a description of the premises, otherwise than by reference to the mortgage deed—but does include the date of record.

(276.)

**Assignment of Bond and Mortgage with Warrant of Attorney.—
New Jersey Form.**

Know all Men by these Presents, That I _____ of _____ for and in consideration of the sum of _____ dollars lawful money of the United States of America, to me in hand paid by _____ of _____ at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over, unto the said _____ a certain indenture of mortgage, bearing date the _____ day of _____, 19____, made by _____ as mortgagor to me as mortgagee, and recorded in the office of the Register of Deeds for the county of _____ in the State of New Jersey in book _____, page _____, and the mortgaged premises therein described, with the appurtenances; together with the bond or obligation in said indenture of mortgage mentioned, and thereby intended to be secured, and the warrant of attorney to confess judgment thereto annexed, and all moneys due and to grow due thereon. To have and to hold the same unto the said _____, his heirs, executors, administrators and assigns, to his and their proper use, benefit, and behoof; subject to the provision or condition of redemption in said indenture of mortgage contained.

In Witness, etc.

The Pennsylvania form is substantially the same as that above.

(277.)

Discharge of Mortgage.—Short Form.

The Debt, secured by the mortgage made by _____ to _____, dated _____ and recorded with _____ deeds, lib. — fol. — has been paid to me by (*name of mortgagor*) and in consideration thereof I do discharge the mortgage and release the mortgaged premises to said (*name of mortgagor*) and his heirs.

Witness my hand and seal _____, A. D. 19____

(*Signature.*) (*Seal.*)

Executed and Delivered in Presence of

(278.)

Discharge of Mortgage.—Massachusetts Form.

Know all Men by these Presents, That I _____ the mortgagee named in (or the assignee of) a certain mortgage given by _____ to _____ dated the _____ day of _____, A. D. 19____, and recorded with _____ deeds, Book _____, page _____, do hereby acknowledge that I have received from _____, the mortgagor named in said mortgage, (or _____ claiming to own the equity of redemption in the premises described in said mortgage) full payment and satisfaction of the same; and in consideration

thereof I do hereby cancel and discharge said mortgage, and release and quitclaim unto the said _____, and his heirs and assigns forever, the premises thereby conveyed.

In Witness, etc.

(279.)

Satisfaction of Mortgage, in use in New York.

STATE OF NEW YORK, }
COUNTY OF _____, } ss.

I do hereby Certify, That a certain Indenture of Mortgage, bearing date the _____ day of _____, one thousand nine hundred and _____ made and executed by (*name, residence, and occupation of mortgagor*) on (*give the day of the date of the mortgage*) to (*name, residence, and occupation of mortgagee*) for the amount of _____ and recorded in the office of _____ County of _____ in lib. ____ of Mortgages, page _____ on the _____ day of _____ in the year one thousand nine hundred and _____, at _____ o'clock, in the _____ noon, is paid.

And I do hereby consent that the same be discharged of Record.

Dated the _____ day of _____, 19____

(*Signature.*) (*Seal.*)

In presence of

(280.)

Satisfaction of Mortgage, in use in Minnesota.

Know all Men by these Presents, That I (*or we*) (*name, residence, and occupation of assignee or assignees*) do acknowledge full payment and satisfaction of a certain indenture of mortgage executed by _____ to _____ dated the _____ day of _____, 19____, and recorded in the office of Register of Deeds for the County of _____, State of Minnesota, on the _____ day of _____, 19____, in book _____ of mortgages, page _____. Said mortgage was given upon the following described real estate, situate in the County of _____ and State of Minnesota, viz: (*describe the land or premises mortgaged and released, substantially in the same way as they are described in the mortgage*). *If the mortgage has been assigned, the assignee must insert the following clause in brackets.* [Which said mortgage was on the _____ day of _____, A. D. 19____, duly assigned and transferred by the said (*name of the mortgagee*) to (*the name of the assignee*) by written assignment, which was on the _____ day of _____, A. D. 19____, duly recorded in said office of Register of Deeds for the said County of _____ in book _____ of mortgages, page (*here enumerate in a similar way any subsequent assignments of the mortgage so as to show that it is now in the hands of the releasor.*)] And I do hereby authorize and require the Register of Deeds of the said County of _____ to cancel and discharge the same of record in his office.

Witness my hand and seal, this _____ day of _____, A. D. 19____.

In Presence of

(*Signatures.*) (*Seals.*)

(281.)

Release and Quitclaim of Mortgage, as used in some Western States.

Know all Men by these Presents, That I (*name of mortgagor*) of the County of _____ and State of _____ for and in consideration of one dollar, to me in hand paid, and for other good and valuable considerations, the receipt whereof is hereby confessed, do hereby grant, bargain, remise, convey, release, and quitclaim unto (*name of assignee or releasee*) of the County of _____ and State of _____ all the right, title, interest, claim, or demand whatsoever I may have acquired in, through, or by a certain indenture or mortgage deed, bearing date the _____ day of _____, A. D. 19____, and recorded in the recorder's office of _____ County, in book _____ of _____, page _____, to the premises therein described, and which said deed was made to secure a certain promissory note (*or bond*) bearing even date with said deed, for the sum of _____ dollars and _____ cents.

Witness my hand and seal this _____ day of _____, A. D. 19____.

(*Signature.*) (Seal.)

(282.)

Release of Deed of Trust, in use in Colorado.

Know all Men by these Presents, That whereas (*name, residence, and occupation of the mortgagor*) of the County of _____ in the State of Colorado, by his certain deed of trust, dated the _____ day of _____, A. D. 19____, and duly recorded in the office of the County Clerk and Recorder of _____ County, in the State of Colorado, on the _____ day of _____, A. D. 19____, in book _____ of said _____, County Records, on page _____ conveyed to the undersigned (*name, residence, and occupation of trustee in the trust deed*) of the County of _____ in the State of Colorado, as trustee _____ certain real estate in said deed of trust described, in trust to secure to _____ the payment of a certain promissory note with interest, and all charges thereon, as in said deed of trust mentioned.

And Whereas, The said _____ has paid and fully satisfied said note together with all interest and charges thereon, according to its tenor;

Now, Therefore, At the request of the said _____ as aforesaid, and in consideration of the premises, and in the further consideration of the sum of one dollar, to me in hand paid by the said _____ the receipt whereof is hereby acknowledged, I _____ trustee as aforesaid, do hereby remise, release, and forever quitclaim unto him, the said _____ and his heirs and assigns forever, all the right, title, and interest which I have in and to the said real estate, as the trustee in said deed of trust mentioned; and more particularly described as follows, to wit: (*describe the land or premises mortgaged and now released, as they are described in the trust deed or mortgage*) situate, lying, and being in the County of _____ and State of Colorado.

To Have and to Hold the same, together with all and singular the privileges and appurtenances unto the said _____, his heirs and assigns for-

ever. And further, that the said trust deed is, by these presents, to be considered as fully and absolutely released, canceled, and forever discharged.

Witness my hand and seal, this _____ day of _____, A. D. 19____

(Signature.) (Seal.)

Signed, Sealed, and Delivered in the Presence of

(283.)

Release of a Trust Deed Mortgage at the Request of the Creditor, in use in Virginia and West Virginia.

This Deed, Made this _____ day of _____ in the year one thousand nine hundred and _____ between (*name, residence, and occupation of the trustee in the trust deed*) of the first part, and (*name, residence, and occupation of the creditor in the trust deed*) of _____ of the second part, and (*name, residence, and occupation of the mortgagor in the trust deed*) of the third part.

Whereas, The said _____ in order to secure the said _____ the payment of the sum of _____ did, by his deed bearing date on the _____ day of _____, 19____, recorded in the office of the Clerk of _____ County convey to the said _____, his heirs and assigns, certain _____ estate described in the said deed as follows: (*here describe the land or premises mortgaged and now released, in the same way as in the trust deed*) and the said sum of money having been fully paid to the said _____ he the said _____ (*creditor*) has requested that the estate conveyed by the said deed of trust to the said _____ in the said property hereinbefore mentioned and described, be now released to him the said _____. This deed, therefore, witnesseth, that for and in consideration of the premises, as well as of the sum of five dollars, the said _____ with the consent of the said (*creditor*) signified by his signing and sealing this deed, doth release to the said _____ all his claim upon the said property.

Witness the following signatures and seals.

(Signatures of trustee and creditor.) (Seals.)

(284.)

Release of a Part of the Mortgaged Premises.

This Indenture, Made the _____ day of _____ in the year of our Lord one thousand nine hundred and _____ between (*name, residence, and occupation of the mortgagee and releasor*) party of the first part, and (*name, residence, and occupation of the mortgagor to whom the release is given*) party of the second part.

Whereas, The said party of the second part, by indenture of mortgage, bearing date the _____ day of _____, one thousand nine hundred and _____, for the consideration therein mentioned, and to secure the payment of the money therein specified, did convey certain lands and tenements, of which the lands hereinafter described are part, unto the said party of the first part.

And Whereas, The said party of the first part, at the request of the said party of the second part, has agreed to give up and surrender the lands hereinafter described unto the said party of the second part, and to hold and retain the residue of the mortgaged lands as security for the money remaining due on the said mortgage:

Now this Indenture Witnesseth, That the said party of the first part, in pursuance of the said agreement, and in consideration of _____ to him duly paid at the time of the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, released, quitclaimed, and set over, and by these presents does grant, release, quitclaim, and set over, unto the said party of the second part, all that part of the said mortgaged land (*here describe accurately all that part of the mortgaged land which it is intended to release, distinguishing it from that which is retained*).

Together with the hereditaments and appurtenances thereto belonging; and all the right, title, and interest of the said party of the first part, of, in, and to the same, to the intent that the lands hereby conveyed may be discharged from the said mortgage, and that the rest of the lands in the said mortgage specified may remain to the said party of the first part as heretofore. To have and to hold the lands and premises hereby released and conveyed, to the said party of the second part, and his heirs and assigns, to his and their only proper use, benefit, and behoof forever, free, clear, and discharged of and from all lien and claim, under and by virtue of the indenture of mortgage aforesaid.

In Witness Whereof, The said party of the first part has hereunto set his hand and seal on the _____ day of _____ in the year _____.

Executed and Delivered in Presence of

(Signature.) (Seal.)

(285.)

Partial Release—Another Form.

Know all Men, That I _____ of _____, the mortgagee (*or assignee of the mortgagee*) named in a certain mortgage given by _____ to _____, dated, etc., and recorded, etc., in consideration of the sum of _____ to me paid by the said _____, the receipt whereof is hereby acknowledged, do hereby remise, release, and forever quitclaim unto the said _____, all the right, title, and interest which I acquired under the aforesaid mortgage in or to that portion of the premises therein conveyed which is described as follows, viz: _____ To have and to hold the same to the said _____ and his heirs and assigns to their own use and behoof forever.

But this release shall not in any way affect or impair my right to hold under the said mortgage as security for the sum remaining due thereon, or to sell under the power of sale in said mortgage contained, all the remainder of the premises therein conveyed and not hereby released.

In Witness Whereof, etc.

(286.)

Deed Extending a Mortgage.

This Indenture, Made this _____ day of, A. D. 19____, by and between (*name, residence, and occupation of the mortgagee*) the owner and holder of a certain promissory note (*or bond*) for the principal sum of _____ dollars, given by (*name of mortgagor*) and secured by a mortgage of certain real estate in _____ in the County of _____ and State of _____ dated _____ day _____, A. D. 19____, and recorded in the Registry of Deeds for the County of _____ lib. — fol. — party of the first part, and the said (*name of mortgagor*) party of the second part,

Witnesseth, That the said parties, for themselves and their representatives, hereby mutually agree that the time for the payment of the principal of said note and mortgage debt shall be and the same is hereby extended for the term of _____ years from the _____ day of _____, A. D. 19____, and that the same is to bear interest from said date at the rate of _____ per cent. per annum, payable on the _____ day of _____ and the _____ day of _____ in every year, until said principal sum shall be fully paid.

And the said party of the second part hereby covenants and agrees that he will not require the holders of said note and mortgage to receive payment of said mortgage debt during said extended term; that he will punctually pay the interest now due, and to grow due thereon, at the times and at the rate aforesaid; that he will keep the mortgaged premises in good repair, and insured against fire, and the taxes thereon duly paid, according to the provisions of said mortgage, and that at the expiration of said extended term he will pay the said mortgage debt, with all interest then due thereon.

It is expressly understood and agreed that nothing herein contained shall be construed to impair the security of said party of the first part, or his executors, administrators, or assigns, under said mortgage, or to affect or impair the lien on the real estate therein described which he has by virtue of said mortgage, nor affect or impair any rights or powers which he may have under the said note and mortgage for the recovery of the mortgage debt, with interest, in case of non-fulfillment of this agreement, or of any of the provisions hereof, by said party of the second part.

In Witness Whereof, The said parties have hereunto set their hands and seals the day and year first above written.

(*Signature of mortgagee.*) (Seal.)

(*Signature of mortgagor.*) (Seal.)

Signed, Sealed, and Delivered in Presence of

(287.)

Certificate of Entry to Foreclose.

We hereby Certify, That on the _____ day of _____ in the year one thousand nine hundred and _____ we were present and saw _____ (*name of mortgagee or of his assignee or attorney*) the mortgagee named

in a certain mortgage given by _____ to _____ dated _____, A. D. 19____, and recorded in _____ Registry of Deeds, book _____, page _____, make an open, peaceable, and unopposed entry on the premises described in said mortgage, for the purpose, by him declared, of foreclosing said mortgage for breach of the condition thereof.

(Signatures of witnesses.)

STATE OF _____, }
COUNTY OF _____, } ss.

_____, 19____ Then personally appeared the above-named _____ and _____ and made oath that the above certificate by them subscribed is true, before me—

Justice of the Peace.

ABSTRACT OF STATE LAWS RELATING TO FORECLOSURE OF MORTGAGES.

Alabama.—Mortgages usually contain a power of sale authorizing foreclosure without intervention of court. They may also be foreclosed by bill in equity. In either case two years are allowed for redemption.

Alaska.—Foreclosure is by action. Judgment is given for debt, costs and attorney's fees; mortgaged property is ordered sold and proceeds applied to payment of judgment. Mortgagor may redeem within twelve months after confirmation of sale.

Arizona.—Foreclosure in all cases by action, and sale of mortgaged premises to satisfy judgment. Mortgages may redeem within six months after sale.

Arkansas.—Mortgagee must, before foreclosure, render itemized statement to mortgagor of amount due. If foreclosure is by sale under power in mortgage, property must be appraised and bring two thirds of appraised value. On second sale within one year property goes to highest bidder. In foreclosure by bill in equity there is no appraisal. In either case mortgagee can redeem within one year after sale. Suits to foreclose must be brought before debt is barred by limitation. Partial payments to operate as extension of time must be noted on margin of record.

California.—Mortgages are foreclosed by suit in equity, or by sale under power in mortgage or deed of trust. When debt is barred, mortgage also is barred. Mortgagee may redeem within twelve months. Renewal or extension of mortgage must be made with same formalities as mortgage itself.

Colorado.—Mortgages are usually in the form of trust deeds made to an officer called the "Public Trustee," and foreclosed by him by sale under power in the deed. If made to any other trustee foreclosure must be by suit. Mortgagee may redeem within six months, and judgment creditor within nine months.

Connecticut.—Foreclosure by proceedings in equity. Court may fix time for redemption (usually two to six months), and if debt is not paid within that time property belongs absolutely to mortgagee; or court may, on motion of either party, order a sale.

Delaware.—Mortgages are generally accompanied by bonds instead of notes, and made without power of sale. Foreclosure by action, and sale on execution. There is no redemption.

District of Columbia.—Trust deeds with power of sale usually take the place of mortgages. They are foreclosed by sale under the power, and there is no redemption.

Florida.—Mortgages are foreclosed by bill in equity and sale. There is no redemption.

Georgia.—Mortgages and trust deeds to secure loans are foreclosed by proceedings in equity and sale, or by sale under power. There is no redemption. Wife's dower in lands owned by husband at his death takes precedence, even if mortgage be assented to by her.

Hawaii.—Mortgage with power of sale may be foreclosed by mortgagee by sale under the power, and filing with registrar copy of notice of sale and affidavit. Or mortgagee may make entry on the premises for foreclosure with written consent of mortgagor, or in the presence of two witnesses whose affidavit must be recorded. Possession continued for two years bars redemption. Foreclosure may also be by suit in equity. In case of sale there is no redemption.

Idaho.—Foreclosure only by action, and sale under order of court. Mortgagor may redeem within one year after sale.

Illinois.—Mortgages may be in common form, or in that of trust deeds. Foreclosure only by action or suit in equity. Where property is clearly of less value than amount of mortgage, and mortgagor is insolvent, mortgagee may be permitted to take land in satisfaction of debt, with no right of redemption. In case of sale mortgagor may redeem within one year.

Indiana.—Mortgages are foreclosed only by proceedings in court and sale. Mortgagee may redeem within one year after sale.

Iowa.—Foreclosure only by suit. Mortgagor has one year after sale in which to redeem.

Kansas.—Foreclosure only by suit. Mortgagor may redeem within eighteen months after sale, and is entitled to possession of the premises in the meantime.

Kentucky.—Foreclosure only by proceedings in equity. Premises must be appraised before sale. If they bring less than two-thirds of appraised value, mortgagor may redeem within twelve months. Mortgages are barred in fifteen years unless renewed or extended by partial payments.

Louisiana.—Foreclosure only by judicial proceedings and sale. There is no redemption. Mortgage must be renewed within ten years after date.

Maine.—Power of sale mortgages may be foreclosed by mortgagee by sale in accordance with terms of power in which case there is no redemption. Foreclosure by possession is effected: 1. By judgment of court and possession; 2. By entry with consent of mortgagor; 3. By entry in presence of two witnesses who make sworn certificate. Possession must be retained for one year. Abstract of writ of possession and return, written consent, or certificate must be recorded within thirty days after entry. Foreclosure without taking possession is: 1. By three weeks' newspaper notice, describing land and claiming foreclosure for condition broken; or 2. By service of

same on mortgagor or present holder of record title; to be recorded within thirty days after last publication or service. Mortgagee's title is complete in one year after entry, first publication, or service, provided affidavit of mortgagee be recorded within three months, setting forth names of parties, date of mortgage, date and place of record of certificate of foreclosure, that possession, if taken has been continuous for one year, that no payment has been made and no act done waiving rights under foreclosure. Mortgages may also be foreclosed by proceedings in equity.

Maryland.—Mortgages must have endorsed thereon affidavit of mortgagee or his agent "that the consideration in said mortgage is true and bona fide as therein set forth." Power of sale mortgages in Baltimore are foreclosed by proceedings in equity, in which sale is made by a trustee appointed by the court. In the counties sale is made by the mortgagee, who gives bond, and after sale reports to the court for ratification and confirmation.

Massachusetts.—Mortgages usually contain a power of sale, and, on breach of condition, property is sold by mortgagee without proceedings in court; the deed and affidavit of sale must be recorded within thirty days. There is no redemption. Foreclosure may also be by writ of entry and conditional judgment for payment of mortgage debt within two months, in default of which mortgagee is entitled to possession. This method is seldom used. Mortgagee may also make peaceable entry for foreclosure in the presence of two witnesses whose affidavit of the fact must be recorded within thirty days. In either of these cases foreclosure becomes complete in three years after entry.

Michigan.—Mortgages containing power of sale may be foreclosed by mortgagee by sale after three months publication of notice. Deed does not become operative until one year after sale, within which time mortgagor may redeem. Foreclosure may also be by bill in equity, under which sale may be ordered after six months from date of filing bill. Mortgagor may redeem within six months after sale. Foreclosure must be within fifteen years after maturity of mortgage or last payment.

Minnesota.—Mortgages usually contain a power of sale, and may be foreclosed by sale after six weeks advertisement. Foreclosure may also be by action. In either case mortgagee may redeem within one year after sale. There may also be a "strict foreclosure under decree of court, but decree cannot be entered until one year after judgment fixing amount of debt. Mortgage must be foreclosed within fifteen years from maturity unless regularly extended.

Mississippi.—Foreclosure may be made by mortgagee by sale under power in mortgage, or by bill in chancery and sale thereunder. No redemption after sale. If remedy at law on the debt is barred, remedy in equity on the mortgage is also barred unless within six months extension is noted on record or new mortgage noting extension is filed for record.

Missouri.—Mortgage is usually in form of deed of trust, under which trustee is authorized to sell without suit as in case of mortgage with power of sale. If beneficiary or his representative purchases at sale, mortgagee has one year to redeem, provided he gives written notice of intention to redeem at or within ten days before sale, and within twenty days after sale

gives security for payment of interest, expenses, etc. When debt is barred by limitation right to foreclose is also barred.

Montana.—Foreclosure by action, and sale under decree of court; or, if in form of trust deed, by sale by trustee under power, or by sale under power in mortgage. One year from sale allowed for redemption. Mortgage is barred in eight years after maturity unless within sixty days thereafter the mortgagee files affidavit of renewal setting forth date, place of record, amount of debt, amount unpaid, and that mortgage is not renewed for purpose of hindering, delaying or defrauding creditors of mortgagor or owner of land. This operates as an extension for eight years.

Nebraska.—Foreclosure only by sale under decree of court. Stay of execution on decree for nine months on written request. No redemption from sale. Action to foreclose barred in ten years from maturity, or last payment, or new promise.

Nevada.—Foreclosure by action and sale under order of court. No redemption after sale.

New Hampshire.—If mortgage contains power of sale, mortgagee may sell under the power, first giving statutory notice for three weeks. No redemption after sale. Foreclosure may also be by entry under process of law and continued possession one year; or by peaceable entry and possession one year with three weeks' publication of notice, the first publication to be six months before right of redemption is foreclosed; or by mortgagee in possession with similar publication and possession for one year after time specified in notice.

New Jersey.—Mortgage is usually accompanied by bond. Foreclosure by suit in equity and sale. No redemption, unless action is brought on bond for deficiency of mortgage debt.

New Mexico.—Foreclosure may be by sale under power in trust deed or mortgage, or under order of court. In former case one year is allowed for redemption; in the latter, nine months. In judicial proceeding no sale until ninety days after order of court, within which time mortgagor may redeem.

New York.—Foreclosure by action, in which all persons interested are made parties, and sale under order of court. No redemption by persons made parties, or properly notified. Mortgages containing power of sale may be foreclosed by sale under the power, provided certain statutory provisions as to notice, advertising, etc., are complied with.

North Carolina.—Foreclosure by action, or, if mortgage contain power of sale, by sale under the power. In latter case sale must be advertised for twenty days at courthouse door, as well as in manner provided in mortgage. No right of redemption, but if within ten days bid be raised ten per cent. on sale for \$750, or five per cent. on larger amount, resale may be ordered.

North Dakota.—Foreclosure by action, or, in case of power of sale mortgage, by sale under power. Mortgagor has one year to redeem, during which he has possession of premises.

Ohio.—Foreclosure by suit, and sale under order of court. No redemption from sale. There are special statutory provisions as to mortgages given to pay off prior encumbrances, or to improve property.

Oklahoma.—Foreclosure only by action and sale. Unless mortgage contain words, "and waive the appraisement," property must be appraised, and not sold for less than two-thirds of appraised value. If appraisal be waived, no order of sale until six months after date of judgment.

Oregon.—Foreclosure by suit in equity and sale. Mortgagor may redeem within one year after confirmation of sale. Right to foreclose is barred after ten years from maturity or recorded extension of mortgage. But if mortgagor still owns property, and there are no liens or rights of third parties acquired after said ten years, mortgage may be foreclosed if any payment be made within ten years before suit.

Pennsylvania.—Mortgage is usually accompanied by bond, and warrant to confess judgment. Foreclosure is usually by writ of *scire facias*, but this cannot be sued out until one year after mortgage becomes due unless there is express waiver. No redemption after execution sale. Sheriff's deed bars wife's right of dower.

Philippines.—Mortgages are governed by the Civil Law in force prior to American occupation. This provides for sale of mortgaged property to satisfy debt.

Porto Rico.—The provisions of the Spanish law are still in force, providing for a summary sale of property on breach of condition.

Rhode Island.—Power of sale mortgages are usually foreclosed by sale under the power, from which there is no redemption. Foreclosure may also be by proceedings in equity. Mortgagee may obtain possession for strict foreclosure by action at law, or by peaceable entry in presence of two witnesses, whose certificate must be acknowledged and recorded. In either case mortgagor has three years to redeem.

South Carolina.—Foreclosure is by suit, and sale of premises. There is no right of redemption from sale.

South Dakota.—Mortgages or assignments cannot be recorded unless they give post office address of mortgagee or assignee. Power of sale mortgages may be foreclosed by sale under power without action of court; but foreclosure must be commenced within fifteen years after cause of action accrued. Foreclosure may also be by action and sale. One year allowed for redemption, during which mortgagor has right of possession. An additional year allowed on payment of all taxes and interest due on mortgage, and one year's interest in advance.

Tennessee.—Mortgages are almost exclusively in the form of trust deeds, and are foreclosed by trustee's sale under power in the deed. Unless right to redeem is waived, or is limited by decree, land may be redeemed within two years. Wife need not join in mortgage except of homestead. Lien barred in ten years.

Texas.—Foreclosure by suit, and sale; or, if mortgage contain power of sale, by sale under power. No redemption after sale.

Utah.—Foreclosure by action and sale, with six months right of redemption.

Vermont.—Foreclosure by chancery suit, or by action, under which title passes to mortgagee without sale, subject to redemption within one year, or, if security is insufficient, a less time at discretion of the court.

Virginia.—Trust deeds usually take the place of mortgages, and foreclosure is by sale by the trustee without intervention of court. There is no redemption from sale.

Washington.—Foreclosure by action and sale. One year is allowed for redemption.

West Virginia.—Foreclosure by sale under decree of court of equity. Trust deeds usually take the place of mortgages, under which land is sold by trustee without proceedings in court. No redemption after sale.

Wisconsin.—If mortgage contains power of sale foreclosure may be by advertisement and sale under power, with one year allowed for redemption. In foreclosure by action, no sale until one year after date of judgment, and six weeks' publication of notice. No redemption after sale.

Wyoming.—Foreclosure by sale under decree of court of equity, or by advertisement and sale if mortgage contains power of sale. Six months allowed for redemption.

CHAPTER XXXII.

LEASES.

A LEASE is a contract whereby one party (the lessee or tenant) takes the possession of the land and all that is on it, and the other party (the lessor or landlord) gives possession of the land, and reserves (that is, agrees to take) a rent, which the tenant pays him by way of compensation.

All things usually comprehended under the words "house," "farm," "land," "store," etc., pass to the tenant, where such words are used, unless there be an express exception. And inaccuracies as to quantities, names, measurements, or amounts, will be corrected, if there be enough in the lease to make the purposes and intentions of the parties certain. And letting to hire anything to be used carries with it all those appurtenances and accompaniments necessary for the proper use and enjoyment of the thing, which belong to the lessor.

A landlord is bound to put his lessee into possession with good title. If he covenants "to renew" generally, this means a renewal of the lease on the same terms, but without inserting in the new lease another covenant of renewal.

In the absence of fraud or concealment the tenant is bound by his lease whatever the actual condition of the premises may turn

out to be. There is no warranty implied by law on the part of the landlord that the premises are tenantable, or even reasonably suited for occupation; the rule of *caveat emptor* applies.

An exception to this rule has, however, been made in the case of a lease of a furnished house for immediate occupancy, and where a furnished sea-shore house, let for the summer season, was found to be infested with bugs, the right of the tenant to cancel his lease was sustained.

The landlord is bound to inform the tenant of any hidden defect in the premises or danger therein known to him at the time of making the lease, but is under no obligation to notify him as to such defects and dangers as would be apparent on reasonably careful inspection, unless the tenant makes express inquiries as to the condition of the premises. And if the tenant be induced to take his lease by false and fraudulent representations of the landlord he may on the discovery of the fraud cancel the lease.

A landlord is under no legal obligation to repair the house, unless he expressly agrees to do so. If the house is never so much dilapidated and disfigured as to paper, paint, etc., and locks and blinds, and doors and windows are out of order, and the like, the tenant can claim nothing of the landlord. Even if it becomes wholly uninhabitable by no fault of the house or of the landlord, as if it burns up, or is blown down, or if the overflow of a stream ruins a field or a farm, still the landlord is not bound to do anything, unless by special agreement.

Accordingly it appears to be the law that the tenant cannot leave his house, or refuse to pay rent, for any cause arising after the hiring not occasioned by the act of the landlord or by some neglect of duty on his part. But, strange to say, the rights of the tenant in such case are still somewhat uncertain. But where the premises become uninhabitable by the fault of the landlord, as from his failure to furnish heat in an apartment, or to repair drains which it was his duty to keep in repair, it has been held that the tenant is justified in abandoning the premises and refusing to pay further rent.

If the house be wholly destroyed, the tenant must still pay rent, under an ordinary lease; because the law looks upon the land as the principal thing, and the house as secondary. And not only so, but if the tenant covenants "to return and redeliver the house at the end of the term, in good order and condition,

reasonable wear and tear only excepted," he would be bound under this agreement to rebuild the house if it were burned down. But recently all well-drawn leases have clauses providing that the rent shall cease or be abated while the premises are uninhabitable from fire or any other unavoidable calamity. A similar exception is added to the clause about returning the house at the end of the lease. If this exception be in, a tenant is not bound to rebuild, even if the house be burned through the carelessness of himself or his servants. In some of the States the rights of the parties under these circumstances are regulated by statute.

A tenant of a room, or of a suite of chambers, is entitled to the use of all the appurtenances and accommodations which fairly go with it, as of the front door and entry, water-closets, and of all windows, etc., proper to the enjoyment of what he hires. But an express agreement about all these things, and cellar-room, pump, and the like, is always safest.

The tenant is not bound to make general repairs without an express agreement. But he must make such as are necessary to preserve the house from injury, as from rain, if shingles or slates are blown off or glass broken. And he would be bound even for ornamental repairs, as paper and paint, under a covenant to return "in good order."

A tenant is not responsible for taxes, unless it is expressly agreed in the lease that he shall be.

The tenant of a farm is bound, without express covenants, to manage and cultivate the same in such a manner as good husbandry and the usual course of management of such farms in his vicinity would require.

The times for payment of rent are usually specified in the lease, if not, they would be governed by the usage of the country, if there were any of sufficient distinctness and force.

A tenant under a lease which says nothing about underletting has a perfect right to underlet, remaining himself bound for his rent to his landlord.

If there be a clause prohibiting him from underletting or assigning, and he agrees not to, nevertheless he may do so without forfeiting the land; but he will be, as before, liable for rent; and besides this, he will be responsible in an action for any dam-

ages which the landlord can show that he has sustained by such underletting.

It is usual to go further in the lease than this, and provide that such underletting shall make a forfeiture of the lease, and authorize the landlord to enter upon the premises and turn the tenant out. Where there is this covenant, if the tenant now underlets, the landlord cannot avail himself of the clause of forfeiture and afterwards hold the tenant for his rent. He may either hold him for his rent, and also for damages, or he may terminate the lease; but cannot do both. That is, if he continues to hold the tenant responsible for rent, he cannot prevent the tenant's letting somebody else occupy the house and pay to him (the tenant) the rent which he pays over. He may, however, after forfeiture, if the lease so provides, hold the tenant responsible in damages for subsequent loss of rent.

At the expiration of the term of the lease the interest of the tenant is at an end. If he continues in possession he is only what the law terms a tenant at sufferance, having no right or interest in the premises, and liable to be turned out at once without notice. If, however, he holds over with the tacit consent of the landlord, the general rule in this country is that the landlord may, at his election, treat him as a tenant from year to year, and may hold him for another year on the terms of the original lease. In Maine, New Hampshire and Massachusetts, where tenancies from year to year are not recognized by the law, such holding over with the consent of the landlord, express or implied, makes the lessee only a tenant at will, and the same result is effected by statute in other States. And where a tenant holds over pending negotiations for a new lease he is held to be a tenant at will.

A tenancy at will may be created in other ways, as by the occupation of land under an oral agreement without a lease. The characteristics of such a tenancy are the uncertainty of its duration, and the right of either party to terminate it by giving proper notice. A tenant at will cannot leave, nor can he be turned out, without a notice to quit. The law on this subject is not uniform. In general, however, it is this. If rent is payable quarterly, or not more frequently, then there must be a quarter's notice. If rent is payable oftener, then the notice must be as long as the period of payment. Thus, if rent is payable monthly, there must be a month's notice; if weekly, a week's

notice. But the notice must terminate on a day when the rent is payable. It may be given at any time, but operates only after the required interval or period between two payments. Thus, if a tenant whose lease terminates on the 31st of December holds over by consent, and pays rent quarterly, and the landlord wishes that he should leave the house on the last day of September, he may give notice on the preceding 30th day of June, or any day preceding that. But if he gives notice on any day before the 30th of June, the tenant will still have a right to stay until the 30th of September. Properly, the notice should specify the day, and the right day, when the tenant must leave; and should be in writing.

A tenancy at will may also be terminated by a written lease of the premises made by the landlord to a third person. The lessee under such a lease is entitled to immediate possession, and the tenant at will, after notice from the lessee to vacate, is entitled only to such reasonable time as may be necessary to remove his property from the premises.

A tenant at will may give notice of his intention to quit, and generally it will be subject to the same rules already stated in reference to the notice given by a landlord. A tenant should give his notice to the party to whom he is bound to pay rent, or to an authorized agent of that party.

In all well-drawn leases there is a proviso that if the rent be in arrear the lessor may enter on the premises and expel the lessee, and so terminate the tenancy. Under the common law this was a very technical proceeding, requiring among other things a demand by the landlord of the exact amount of rent due, and on the very day it fell due. By statute, however, in nearly all, if not all, of our States it is provided in substance that if the rent be in arrear the lessor may, by giving the tenant a written notice to quit for non-payment of rent, terminate his tenancy at the end of the period named in the notice, and if the rent be not then paid he may by a summary proceeding in the courts obtain possession of the premises. The time allowed by such notice is usually brief; the statutes of the different States vary on this point, but a frequent period is fourteen days. And if notice to quit is given because the rent is unpaid, it may be given at any time and will operate at the end of the period which the law

designates; but it should specify the day on which the tenant must quit.

It is quite important that both tenant and landlord should have some knowledge of the law of fixtures; for this tells them what things the tenant may take away and what he cannot. For there are many things which a tenant may add, and afterwards remove, and many which he cannot remove. The method of affixing them may be a useful criterion, as it indicates the purpose of removal or otherwise. If with screws, or in such a way as to show that removal was intended, things may be taken away, when, if the same things were fastened more permanently, they could not be. In modern times the rule in favor of the tenant seems to extend as far as this: whatever he has added, and can remove, leaving the premises entirely restored and in as good order as if he had not removed it, that he may take away. Among the things held to be removable, in different adjudged cases, are these: ornamental chimney-pieces; coffee-mills; cornices screwed on; furnaces; fire-frames; stoves; iron backs to chimneys; looking-glasses; pumps; gates; rails and posts; barns or stables on blocks.

Among those held not removable are these: barns fixed in the ground; benches fastened to the house; trees, plants, and hedges, not belonging to a gardener by trade; conservatory strongly affixed; glass windows; locks and keys.

But almost every one of these might be removable, or not, according to the intent of the parties, and the rule above stated, of removableness with or without injury.

If a man sells a house, the law of fixtures is construed far more severely against him than against a tenant who leaves a house; that is, the seller must permit the buyer to hold a great many things which an outgoing tenant might remove. Of course, a seller may take what he will from his house before he sells it, or make what bargain the parties choose to make about the fixtures. But if he makes no such bargain, and sells the house, he cannot then take from the house what a tenant who put them there might take.

In favor of trade and manufactures, the law permits almost anything which was put in by a tenant for such purposes to be taken away, if the premises can be restored substantially to their original condition.

The tenant takes his lease subject to the state of the landlord's title at that time. If the land was then mortgaged or subject to any easement or restriction the tenant is liable to be turned out of possession by a foreclosure of the mortgage, or to a limitation in the use of the property by reason of such easement or restriction.

In case of a sale by the landlord, his interest in the lease passes to his grantee without any special assignment, and the grantee may collect the rents and enforce the covenants of the tenant in the lease. The landlord may also assign the rents, without parting with his title to the premises. The interest of the tenant is assignable, unless forbidden by the terms of the lease. If the lease is recorded, the assignment should be recorded also.

If the tenant be evicted—that is, turned out of possession—during the term of his lease, his obligation to pay rent ceases. Such eviction may be caused by one having a paramount title to that of the landlord, as in the case of the foreclosure of a mortgage in existence at the date of the lease, or by some act of the landlord himself. The eviction may be actual—such as a forcible dispossession of the tenant—or constructive, the latter term being applied to any act of the landlord which so affects the tenant's enjoyment of the premises that he is legally justified in relinquishing his possession. What acts amount to a constructive eviction is often a question of difficulty. In general, it may be said that they must be of such a character as to cause a substantial and permanent interference with the tenant's enjoyment of the premises. A mere trespass is not sufficient. Examples of such acts are, the closing of a road which furnished the only means of access to the leased premises; digging drains under a house and so undermining the foundations as to render the house uninhabitable; the erection of buildings closing up windows and cutting off light and air, and shutting off the supply of water from a leased stable occupied by the tenant's horses. So too, it has been held that shutting off power from a factory where power was leased with the building, and failure to furnish suitable elevator service in an office building, rendering the premises entirely unsuitable for the purposes for which they were hired, amounted to constructive eviction.

The eviction may be partial, extending only to a part of the leased premises, as where the landlord locked up one room in a

suite of three. While a partial eviction may justify the tenant in abandoning the whole of the leased premises, he is not obliged to do so, and may, if he chooses, continue to occupy the remainder. In such case the tenant is not liable for rent, or to pay for use and occupation of the premises while the acts of eviction continue.

In most of the States leases for a term of more than one year must be in writing, otherwise they take effect only as tenancies at will, even as between the parties thereto.

In Florida leases for two years must be in writing; so in Indiana, New Jersey, North Carolina and Pennsylvania, must leases for three years; in Virginia, leases for five years; and in Maryland leases for seven years.

In Hawaii, Maine, Massachusetts, Missouri, New Hampshire, New Mexico, Ohio, Vermont and Washington leases not in writing take effect only as tenancies at will.

Leases for more than one year are not valid unless recorded, in California, Connecticut, Florida, Hawaii, Idaho, Montana, Nebraska, North Dakota, Oklahoma, Rhode Island, South Carolina, South Dakota, and Vermont; leases for more than three years in Indiana, New York, North Carolina, Ohio, Tennessee, Wisconsin and Wyoming; leases for more than five years in Kentucky, Virginia and West Virginia; leases for more than seven years in Maine, Maryland, Massachusetts and New Hampshire; or for more than twenty-one years in Delaware and Pennsylvania. In the following States all conveyances of land—including leases—must be acknowledged and recorded: Alabama, Alaska, Arkansas, Arizona, Colorado, Georgia, Iowa, Illinois, Kansas, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Mexico, Oregon and Texas.

In North and South Dakota and California, leases of agricultural land are limited to ten years; those of city lots in South Dakota to twenty years. In California leases of city lots are limited to ninety-nine years, and of property of a municipality, a minor or incompetent person to ten years. In North Dakota leases of lands of a town or city are limited to ninety-nine years.

The remarks in respect to the variety of forms which will be found at the close of the chapter on deeds of land, are equally applicable to forms of leases, and should be read in connection with the following forms.

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A Short Form of Lease.

This Indenture, Made the _____ day of _____ in the year of our Lord one thousand nine hundred and _____:

Witnesseth, That I, (name and residence of the lessor) do hereby lease, demise, and let unto (name and residence of the lessee) a certain parcel of land, in the city (or town) of _____ County of _____ and State of _____ with all the buildings thereon standing, and the appurtenances to the same belonging, bounded and described as follows (or, a certain house in said city, giving the street and number, with the land under and adjoining the same).

(The premises need not be described quite as minutely or fully as is proper in a deed or mortgage of land, but must be so described as to identify them perfectly, and make it certain just what premises are leased.)

To Hold for the term of _____ from the _____ day of _____, 19____, yielding and paying therefor the rent of _____ per annum.

And said lessee does promise to pay the said rent in four quarterly payments on the first days of January, April, July, and October in each year during said term, (or state otherwise just when the payments of rent are to be made) and to quit and deliver up the premises to the lessor or his attorney, peaceably and quietly at the end of the term, in as good order and condition, reasonable use and wearing thereof, fire and other unavoidable casualties excepted, as the same now are or may be put into by the said lessor, and to pay the rent as above stated, and all taxes and duties levied or to be levied thereon during the term, and also the rent and taxes as above stated for such further time as the lessee may hold the same, and not make or suffer any waste thereof; nor lease, nor underlet, nor permit any other person or persons to occupy or improve the same, or make or suffer to be made any alteration therein, but with the approbation of the lessor thereto in writing, having been first obtained; and that the lessor may enter to view, and make improvements, and to expel the lessee, if he shall fail to pay the rent and taxes as aforesaid, or make or suffer any strip or waste thereof.

In Witness Whereof, The said parties have hereunto interchangeably set their hands and seals the day and year first above written.

(Signatures.) (Seals.)

Signed, Sealed, and Delivered in Presence of

(289.)

A Fuller Form, with a Provision for Abatement of Rent.

This Indenture, Made this _____ day of _____ in the year of our Lord one thousand nine hundred and _____, by and between (name and residence of lessor) and (name and residence of lessee).

Witnesseth, That the said (name of lessor) does hereby lease, demise, and let unto the said (name of lessee) (describe the premises).

To Hold for the term of _____ years, commencing the _____ day of _____ A. D. one thousand nine hundred and _____ the said lessee, or

those claiming under him, yielding and paying rent therefor the sum of _____ for each and every year, and after the same rate for any part of a year.

And the said lessee, for himself, his heirs, executors, and administrators, does hereby covenant to and with the said lessor, and his heirs and assigns, that he or they will pay the said rent of _____ in equal sums of _____ the first of which payments shall be made on the _____ day of _____ A. D. one thousand nine hundred and _____ and that he or they will pay rent after the same rate for such further time as he the said lessee, or those claiming under him, may hold the premises; that he or they will, from time to time, upon request by the lessor, or his heirs or assigns, pay to them such sum or sums of money as shall be equal to the amount of the taxes and duties, and water-taxes, that shall be levied or assessed on the demised premises for each year and part of a year during the term aforesaid, and during such further time as the said lessee and those claiming under him may hold the premises; that he or they will not suffer nor commit any strip or waste in the premises; that he or they will not assign this lease, nor underlet the whole or any part of the premises, to any person or persons; and that no alterations or additions shall be made during the term aforesaid, in or to the same, without the consent of the said lessor, or of those having his estate in the premises, being first obtained in writing, allowing thereof; and also that it shall be lawful for the said lessor, and those having his estate in the premises, at reasonable times to enter into and upon the same to examine the condition thereof; and further, that he the said lessee, and his representatives, shall and will, at the expiration of said term, peaceably yield up unto the said lessor, or those having his estate therein, all and singular the premises, and all future erections and additions to or upon the same, in as good order and condition, in all respects (reasonable wearing and use thereof, and damage by fire, and other unavoidable casualties excepted) as the same now are, or may be put into by the said lessor or those having his estate in the premises.

Provided always, and these presents are upon this condition, that if the said rent shall be in arrear, or the said lessee or his representatives or assigns do or shall neglect or fail to perform and observe any or either of the above covenants hereinbefore contained, which on his or their part are to be performed, then and in either of said cases, the said lessor, or those having his estate in the said premises, lawfully may, immediately or at any time thereafter, and while such neglect or default continues, and without further notice or demand, enter into and upon the said premises, or any part thereof, in the name of the whole, and repossess the same as of his former estate, and expel the said lessee and those claiming under him, and remove his or their effects (forcibly if necessary) without being taken or deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent, or preceding breach of covenant.

And provided also, that in case the premises, or any part thereof, shall, during said term, be destroyed or damaged by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use and habitation, then, and in such case, the rent hereinbefore reserved, or a just and

proportionate part thereof, according to the nature and extent of the injuries sustained, shall be suspended or abated until the said premises shall have been put in proper condition for use and habitation by the said lessor, or these presents shall thereby be determined and ended at the election of the said lessor or his legal representatives.

In Testimony Whereof, The said parties have set their hands and seals on the day and year first above written, to this and to another instrument of like tenor and date.

(Signatures.) (Seals.)

Signed, Sealed, and Delivered in Presence of

(290.)

A Short Form of Lease in use in some Western States.

This Indesture, Made this _____ day of _____, 19____, between (*name and residence of the lessor*) party of the first part, and (*name and residence of the lessee*) party of the second part, witnesseth that the said party of the first part, in consideration of the covenants of the said party of the second part, hereinafter set forth, doth by these presents lease to the said party of the second part the following-described property, to wit: (*describe the property*).

To Have and to Hold the same to the said party of the second part, from the _____ day of _____, 19____, to the _____ day of _____, 19____. And the said party of the second part, in consideration of the leasing the premises as above set forth, covenants and agrees with the party of the first part to pay the said party of the first part, as rent for the same, the sum of _____ dollars, payable as follows, to wit (*here state the time and terms of payment, much as in the first form of lease hereinbefore given*).

The said party of the second part further covenants with the said party of the first part, that at the expiration of the time mentioned in this lease, peaceable possession of the said premises shall be given to said party of the first part, in as good condition as they now are, the usual wear, inevitable accidents, and loss by fire excepted; and that upon the non-payment of the whole or any portion of the said rent at the time when the same is above promised to be paid, the said party of the first part may, at his election, either distrain for said rent due, or declare this lease at an end, and recover possession as if the same was held by forcible detainer; the said party of the second part hereby waiving any notice of such election, or any demand for the possession of said premises.

The covenants herein shall extend to and be binding upon the heirs, executors, and administrators of the parties to this lease.

Witness the hands and seals of the parties aforesaid.

(Signature of lessor.) (Seal.)

(Signature of lessee.) (Seal.)

(291.)

Lease of City Property, in use in Massachusetts.

This Indenture, Made the _____ day of _____ in the year nineteen hundred and _____, between _____ of _____, (hereinafter called the lessor) of the one part, and _____ of _____, (hereinafter called the lessee) of the other part,

Witnesseth, That in consideration of the rent and covenants herein reserved and contained on the part of the lessee and his heirs, executors, administrators and assigns, to be paid, performed and observed, the lessor doth hereby demise and lease unto the lessee (*description of property leased*).

To Have and to Hold the premises hereby demised unto the lessee , his executors, administrators and assigns, for the term of _____ years from _____ Yielding and paying therefor the yearly rent of _____ dollars, during the said term by equal _____ payments of _____ dollars on the _____ day of each _____ for the _____ ending with _____ the first _____ payment to be made on the _____ day of _____ next, and also at the legal determination of this lease a proportionate part of the said rent for any part of a _____ then unexpired.

And the lessee does hereby for himself and his heirs, executors, administrators and assigns, covenant with the lessor, his heirs and assigns, that the lessee, his executors, administrators, or assigns, during the said term and for such further time as he or they or any other person or persons claiming under him shall hold the said premises or any part thereof, will pay unto the lessor, his heirs or assigns, the said rent at the times and in the manner aforesaid, and will keep all and singular the said premises in such repair, order and condition as the same are in at the commencement of the said term, or may be put in during the continuance thereof, damage by fire or other unavoidable casualty only excepted; and will pay all taxes and charges for water; and will save the lessor, his heirs and assigns harmless from all loss and damage occasioned by the use or escape of water upon the said premises, or by the bursting of the pipes, or by any nuisance made or suffered on the premises, as well as from any claim or damage arising from neglect in not removing snow and ice from the roof of the building, or from the sidewalks bordering upon the premises so leased; and will not assign this lease nor underlet the whole or any part of the said premises without first obtaining on each occasion the consent in writing of the lessor, his heirs and assigns; and will not permit any hole to be drilled or made in the stone or brickwork of the said building, or any placard or sign to be placed upon the building, except such and in such place and manner as shall have been first approved in writing by the lessor, his heirs or assigns; and will keep good with glass of the same kind and quality as that which may be injured or broken, all the glass now or hereafter on the premises, unless the same shall be broken by fire, acknowledging that the same is now whole and in good order; and will defray all the expenses of emptying and cleaning the drains and cesspool, and will leave the same empty; and at the expiration of the said term will remove his or their goods and effects, and those of all persons claiming under him or them, and will peaceably yield up to the lessor, his heirs or assigns,

the said premises, and all erections and additions made to or upon the same, in good repair, order and condition in all respects, damage by fire or other unavoidable casualty excepted; and that during the said term, and such further time as aforesaid, the said premises shall not be overloaded, damaged or defaced; and no trade or occupation shall be carried on upon the said premises, or use made thereof which shall be unlawful, improper, noisy, or offensive, or contrary to any law of the Commonwealth or ordinance or by-law of the City of _____ for the time being in force, or injurious to any person or property; and no act or thing shall be done upon the said premises, which may make void or voidable any insurance of the said premises or building against fire, or may render any increased or extra premium payable for any such insurance; and no addition or alteration to or upon the said premises shall be made without the consent of the lessor, his heirs or assigns; and all property of any kind that may be on the premises shall be at the sole risk of the lessee, or those claiming through or under him, and the lessor, his heirs or assigns shall not be liable to the lessee or any other person for any injury, loss, or damage to any person or property on the premises; and that the lessor, his heirs or assigns and his or their agents may during the said term, at seasonable times, enter to view the said premises, and may remove placards and signs not approved and affixed as herein provided, and may make repairs and alterations if he or they should elect so to do, and may show the said premises and building to others, and at any time within three months next before the expiration of the said term may affix to any suitable part of the said premises a notice for letting or selling the said premises, or building, and keep the same so affixed without hindrance or molestation.

Provided Always, that in case the said premises, or any part thereof, or the whole or any part of the building of which they are a part, shall be taken for any street or other public use, or shall be destroyed or damaged by fire or other unavoidable casualty, or by the action of the city or other authorities, after the execution hereof and before the expiration of the said term, then this lease and the said term shall terminate at the election of the lessor, or his heirs or assigns, and such election may be made in case of any such taking notwithstanding the entire interest of the lessor, or his heirs or assigns may have been divested by such taking; and if they shall not so elect, then in case of any such taking or destruction of or damage to the demised premises, a just proportion of the rent thereinbefore reserved, according to the nature and extent of the injury sustained by the demised premises, shall be suspended or abated until the demised premises, or in case of such taking, what may remain thereof, shall have been put in proper condition for use and occupation.

Provided also, and these presents are upon this condition, that if the lessee or his executors, administrators or assigns do or shall neglect or fail to perform or observe any of the covenants contained in these presents, and on his or their part to be performed or observed, or if the estate hereby created shall be taken on execution, or by other process of law, or if the lessee or his executors, administrators, or assigns shall be declared bankrupt or insolvent according to law, or if any assignment shall be made of his or

their property for the benefit of creditors, then and in any of the said cases, (notwithstanding any license of any former breach of covenant or waiver of the benefit hereof or consent in a former instance) the lessor, or his heirs or assigns, lawfully may, immediately, or at any time thereafter, and without demand or notice, enter into and upon the said premises or any part thereof in the name of the whole, and repossess the same as of their former estate, and expel the lessee and those claiming through or under him and remove their effects (forcibly, if necessary), without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant, and upon entry as aforesaid this lease shall determine; and the lessee covenants that in case of such termination he will indemnify the lessor, his heirs and assigns, against all loss of rent and other payments which he or they may incur by reason of such termination during the residue of the time first above specified for the duration of the said term.

In Witness Whereof, the said parties have hereunto set their hands and seals, the day and year first above written.

L. S.

L. S.

(292.)

Lease of City Property, in use in Chicago.

This Indenture, Made this _____ day of _____ in the year of our Lord one thousand nine hundred and _____ between (*name of the lessor*) of the city of _____ in the County of _____ and State of _____ party of the first part, and (*name and residence of the lessee*) of the second part,

Witnesseth, That the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, or his executors, administrators, and assigns, has demised and leased to the said party of the second part all those premises situate, lying, and being in the city of Chicago, in the County of Cook, and State of Illinois, and known and described as follows, to wit (*here describe the premises*).

To Have and to Hold the said above-described premises, with the appurtenances, unto the said party of the second part, and his executors, administrators, and assigns, from the _____ day of _____ in the year of our Lord one thousand nine hundred and _____, for and during the term of _____ years, and until the _____ day of _____ in the year of our Lord one thousand nine hundred and _____, the said party of the second part paying rent therefor, as hereinafter stated.

And the said party of the second part, in consideration of the leasing the premises aforesaid, by the said party of the first part, to the said party of the second part, does covenant and agree with the said party of the first part, and his heirs, executors, administrators, and assigns, to pay the said party of the first part, at the house (*or office or store*) of the said party of the first part, numbered _____ in _____ Street, Chicago, or at the house or office of his assigns, as rent for the said demised premises, the sum of

(state the whole annual rent) payable as follows (here state the times and terms of the payments of rent).

And it is further agreed by the said party of the second part, in consideration of the leasing of the premises, that the said party of the second part shall and will pay, or cause to be paid, promptly, as soon as the same becomes due, all assessments for water-rents that may be levied upon said demised premises, during the continuance of this lease, by the Board of Water Commissioners of the city of Chicago, and save the said premises and the said party of the first part harmless therefrom, and that he will keep said premises in a clean and healthful condition, in accordance with the ordinances of the city and the direction of the Sewerage Commissioners.

And the said party of the second part hereby covenants and agrees, in case of delay in payment of any water-rent levied upon said premises during said term, to pay said party of the first part, as liquidated damages for such breach of covenant, double the sum of such rent so assessed upon said premises as aforesaid.

And the said party of the second part further covenants with the said party of the first part, that at the expiration of the time in this lease mentioned, he will yield up the said demised premises to the said party of the first part, in as good condition as when the same were entered upon by the said party of the second part, loss by fire or inevitable accident, and ordinary wear excepted.

It is further agreed by the said party of the second part, that neither he nor his legal representatives will underlet said premises, or any part thereof, or assign this lease, without the written assent of said party of the first part, first had and obtained thereto.

It Is Expressly Understood and Agreed, by and between the parties aforesaid, that if the rent above reserved, or any part thereof, shall be behind or unpaid on the day and at the place of payment whereon the same ought to be paid, as aforesaid, or if default shall be made in any of the covenants herein contained, to be kept by the said party of the second part, or his executors, administrators, and assigns, it shall and may be lawful for the said party of the first part, or his heirs, executors, administrators, agent, attorney, or assigns, at his or their election, to declare said term ended, and the said demised premises, or any part thereof, either with or without process of law, to reënter, and the said party of the second part, or any other person or persons occupying, in or upon the same, to expel, remove, and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy as in his or their first and former estate; and it shall be the duty of the said party of the second part, his executors, administrators, or assigns, to be and appear at the said place above specified for the payment of said rent, and then and there tender and pay the same as the same shall fall due from time to time, as above, to the said party of the first part, or his agent or assigns; or in his or their absence, if the party of the second part, or his legal representatives, shall offer to pay the same then and there, such offer shall prevent such forfeiture.

And it is expressly understood that it shall not be necessary in any event for the party of the first part, or his assigns, to go on or near the said de-

leased premises to demand said rent, or elsewhere than at the place aforesaid. And in the event of any rent being due and unpaid, whether before or after such forfeiture declared, to distrain for any rent that may be due thereon, upon any property belonging to the said party of the second part, whether the same be exempt from execution or distress by law or not, and the said part of the second part, in that case, hereby waives all legal rights which he may have to hold or retain any such property, under any exemption laws now in force in this State, or in any other way. Meaning and intending hereby to give to the said party of the first part, and his heirs, executors, administrators, and assigns, a valid and first lien upon any and all the goods, chattels, or other property belonging to the said party of the second part, as security for the payment of said rent, in manner aforesaid, anything hereinbefore contained to the contrary notwithstanding. And if at any time said term shall be ended at such election of said party of the first part, or his heirs, executors, administrators, or assigns, as aforesaid, or in any other way, the said party of the second part, for himself and his executors, administrators, and assigns, does hereby covenant, promise, and agree to surrender and deliver up said above-described premises and property peaceably to the said party of the first part, or his heirs, executors, administrators, and assigns, immediately upon the determination of said term as aforesaid; and, if he shall remain in the possession of the same _____ days after notice of such default, or after the termination of this lease, in any of the ways above named, he shall be deemed guilty of a forcible detainer of said demised premises under the statute, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated; and in order to enforce a forfeiture of this lease for non-payment of rent when due, no demand for rent when due shall be required, any demand being hereby expressly waived.

And it is further covenanted and agreed by and between the parties, that the party of the second part shall pay and discharge all costs and attorney's fees and expenses that shall arise from enforcing the covenants of this indenture by the party of the first part.

In Testimony Whereof, The said parties have hereunto set their hands and seals the day and year first above written.

(Signature of lessor.) (Seal.)

(Signature of lessee.) (Seal.)

In Presence of

(293.)

Lease, with Covenants as to Water-Rate, and Injury by Fire, in use in New York.

This Agreement, Made between (*name and residence of lessor*) party of the first part, and (*name and residence of lessee*) party of the second part, witnesseth, that the said party of the first part has agreed to let, and hereby does let, and the said party of the second part has agreed to take, and hereby does take, the following-described premises (*here describe the premises*), for the term of _____ years, to commence _____, and to end _____,

to be occupied (*describe the intended occupation*) and not otherwise. And the said party of the second part hereby covenants and agrees to pay unto the said party of the first part the annual rent or sum of _____ dollars, payable (*state the times and terms of the payments*.)

And shall also pay the Croton water-rate, and will keep the plumbing work, pipes, glass, and the premises generally in repair, and will surrender them at the expiration of the said term, in as good state and condition as reasonable use and wear thereof will permit.

And the said party of the second part further covenants that he will not assign, let, or underlet the whole or any part of the said premises, nor make any alteration therein without the written consent of the said party of the first part, under the penalty of forfeiture and damages; and that he will not occupy the said premises, nor permit the same to be occupied, for any business deemed extra-hazardous without the like consent, under the like penalty. And the said party of the second part further covenants that he will permit the said party of the first part, or his agent, to show the premises to persons wishing to hire or purchase, and three months next preceding the expiration of the term will permit the usual notices of "to let," or "for sale," to be placed upon the windows, walls, or doors of said premises and remain thereon without hindrance or molestation.

And also, that if default be made in any of the covenants herein contained on the part of the party of the second part, or if the said premises or any part thereof shall become vacant during the said term, the said party of the first part may reënter the same, either by force or otherwise, without being liable to any prosecution therefor; and re-let the said premises or any part thereof in one or more parcels, as the agent of the said party of the second part, and receive the rent thereof, applying the same, first to the payment of such expense as he may be put to in reëntering, and then to the payment of the rent due by these presents; and the balance (if any) to be paid over to the said party of the second part; and, in case of deficiency, said party of the second part will pay the same.

And the said party of the second part hereby further covenants that if any default be made in the payment of the said rent, or any part thereof, at the times above specified, or if default be made in the performance of any of the covenants or agreements herein contained, the said hiring, and the relation of landlord and tenant, at the option of the said party of the first part, shall wholly cease and determine; and the said party of the first part shall and may reënter the said premises, and remove all persons therefrom; and the said party of the second part hereby expressly waives the service of any notice in writing of intention to reënter, as provided for in the third section of an act entitled "An Act to abolish Distress for Rent, and for other Purposes," passed May 13, 1846.

And it is further agreed between the parties to these presents, that, in case the building hereby leased shall be partially damaged by fire, the same shall be repaired as speedily as possible by the party of the first part; that, in case the damage shall be so extensive as to render the building untenable, the rent shall cease until the same be repaired; provided the damage

be not caused by the carelessness or negligence of the party of the second part, or his agents or servants.

If the building be so damaged that the owner shall decide to rebuild, the term shall cease, the premises be surrendered, and the accrued rent be paid up to the time of the fire.

In consideration of the letting of the premises above mentioned to the above named (*name of the lessee*) and of the sum of one dollar to him paid by the said party of the first part, the said party of the second part does hereby covenant and agree to and with the party of the first part above named, and his legal representatives, that if default shall at any time be made by the said party of the second part, in the payment of the rent and performance of the covenants above contained on his part to be paid and performed, that he will well and truly pay the said rent or any arrears thereof, that may remain due unto the said party of the first part, and also all damages that may arise in consequence of the non-performance of said covenants, or either of them, without requiring notice of any such default from the said party of the first part.

Witness our hands and seals this _____ day of _____ in the year of our Lord one thousand nine hundred and _____.

(*Witness.*)

(*Signature of lessor.*) (Seal.)

(*Signature of lessee.*) (Seal.)

(294.)

Lease of City Property, in use in St. Louis.

This Indenture, Made the _____ day of _____ in the year of our Lord nineteen hundred and _____, between (*name and residence of the lessor*) of the first part, and (*name and residence of lessee*) of the second part,

Witnesseth, That the said party of the first part, in consideration of the rents, covenants, and stipulations hereinafter mentioned, and hereby agreed to be paid, kept, and performed by the said party of the second part, his executors, administrators, and assigns, hath leased, and by these presents doth lease, to the said party of the second part the following described premises (*here describe the house, as of brick, or stone, number of stories, street, and number in the block*) in block No. _____ in the city of St. Louis, to commence on the _____ day of _____, 19____, for and during the term of _____ at the annual rent of _____ payable in four equal quarterly payments, beginning three months from the date hereof. Any failure to pay each payment of rent when due, to produce a forfeiture of this lease, if so determined by said lessor or his successors. The lease of said tenement or any part of it is not assignable, nor is said tenement or any part of it to be underlet, without the written consent of said lessor, under penalty of forfeiture. And it is hereby covenanted, that, at the expiration of this lease, the said tenement and premises are to be surrendered to said lessor, his heirs, assigns, or successors, in the condition received, only excepting its natural wear and decay, or the effects of accidental fire. All

repairs deemed necessary by said lessee to be made at his expense. All fixtures shall be bound for the rent.

The said lessee and all holding under him hereby engaging to pay the rent above reserved, and double rent for every day when he or any one else in his name shall hold on to the whole or any part of said tenement, after the expiration of this lease, or of its forfeiture for non-payment of rent, etc. This tenement and premises to be kept free of any nuisance in or adjacent thereto, at the expense of the said lessee.

(Signature of lessor.) (Seal.)

(Signature of lessee.) (Seal.)

(Witness.)

(295.)

Lease of Suite of Rooms.

This Indenture, Made this _____ day of _____ in the year one thousand nine hundred and _____ between _____ of _____ of the first part, and _____ of _____ of the second part, witnesseth:

That the said party of the first part doth hereby demise and lease unto the said party of the second part the Suite of Rooms numbered _____ in the (*here describe the building by name or street and number and name of city or town*).

To Have and to Hold the above-described premises for the term of _____, beginning with the _____ day of _____ A. D. 19____.

Yielding and Paying (except only in case of fire or other casualty as hereinafter mentioned) the rent or sum of _____ dollars yearly, by equal _____ payments of _____ dollars each, at the expiration of each and every _____ hereafter during said term, and at that rate for such further time as the said lessee, or any other person or persons claiming under him shall hold the said premises or any part thereof; the first payment thereof to be made on the _____ day of _____ now next ensuing.

And the lessee hereby covenants with the lessor and his heirs and assigns that he and his executors and administrators will pay the said rent in manner aforesaid; that they will not assign this lease nor underlet the whole or any part of the leased premises; that they will not make or suffer any unlawful, improper, noisy, or otherwise offensive use thereof, nor any use whatsoever other than as and for a private residence; that they will not drive any nails or screws in, or otherwise mar, deface or alter the plastering, woodwork, or any other part of the leased premises; that they will allow the lessor and his heirs and assigns, and their agents, at seasonable times to enter upon said premises, and examine the condition thereof, and make necessary repairs; that they will conform to such reasonable regulations as may from time to time be established by the lessor, or by his heirs or assigns, for the general convenience of the tenants of said building; and at the end of said term will peaceably deliver up the leased premises, in good and tenantable order and condition to the lessor or to his heirs or assigns.

Provided always, and these presents are upon this condition, that in case of a breach of any of the covenants to be observed on the part of the lessee, or in case the estate hereby created shall be taken from the lessee or from

his representatives by process of law, by proceedings in bankruptcy or insolvency or otherwise, the lessor or his heirs or assigns may, while the default or neglect continues, or at any time after such taking by process of law, and notwithstanding any license or waiver of any prior breach of condition, without any notice or demand enter upon the leased premises and thereby determine the estate hereby created, and may thereupon expel and remove, forcibly if necessary, the lessee and those claiming under him and their effects.

But it is Agreed that, in case of a determination of the estate hereby created by an entry for breach of the condition herein contained, the lessee shall indemnify the lessor, or his heirs or assigns for all loss or damage which they may, prior to the time fixed as above for the expiration of this lease, suffer by reason of such determination, whether through decreased rent of said estate or otherwise; and it is also agreed that if the leased premises or any part thereof shall be damaged by fire or other unavoidable casualty, so as to be thereby rendered unfit for use and occupation, then and in such case the rent hereinbefore reserved, or a just and proportionate part thereof, according to the nature and extent of the injury sustained, shall be abated until the said premises shall have been duly repaired and restored by the lessor or his heirs or assigns, or, in case they shall be substantially destroyed, the estate hereby created shall thereupon be determined.

It is also Agreed that all furniture, merchandise or property of any kind which may be on said premises shall be at the sole risk of the lessee, or if the whole or any part thereof shall be destroyed or damaged by fire, water, or otherwise, the lessor shall in no case be held liable to any party by reason thereof.

In Witness Whereof the said parties hereunto, and to another instrument of like tenor, set their hands and seals on the day and year first above written.

Signed and sealed in presence of

(296.)

Lease of Suite of Rooms—Fuller Form.

This Indenture, Made this _____ day of _____ in the year one thousand nine hundred and _____ between _____ of _____ of the first part, and _____ of _____ of the second part,

Witnesseth, That the said party of the first part doth hereby demise and lease unto the said party of the second part the SUITE OF ROOMS numbered _____ in the (*here describe building by name, or by street and number and name of city or town*).

To Have and to Hold the above described premises for the term of _____, beginning with the _____ day of _____, A. D. 19____, and this lease shall continue in full force and effect thereafter from year to year, until one of the parties shall on or before the _____ day of _____ in any year, give to the other party written notice of his intention to terminate this lease, on the _____ day of the following month, in which case the lease hereby created shall terminate in accordance with such notice.

Yielding and Paying (except only in case of fire or other casualty as hereinafter mentioned) as rent, the sum of _____ dollars yearly, by equal _____ payments of _____ dollars at the expiration of each and every _____ hereafter during said term, and at that rate for such further time as the said lessee or any other person or persons claiming under him shall hold the said premises or any part thereof; the first payment thereof to be made on the _____ day of _____ now next ensuing.

And the lessor hereby covenants with the lessee that he shall peaceably hold and enjoy the said premises; and that except in case of accident, or except during necessary repairs, the lessor will, during said term supply said suite with hot and cold water for ordinary household purposes, and furnish heat during the heating season to the various rooms in said suite where radiators or registers are provided by the lessor.

And the lessee hereby covenants with the lessor and his heirs and assigns that he and his executors and administrators will pay the said rent in manner aforesaid; that they will not assign this lease nor underlet the whole or any part of the leased premises without the written consent of the lessor; that they will not make or suffer any unlawful, improper, noisy or otherwise offensive use thereof, nor any use whatsoever other than as and for a private residence; that they will not drive any nails or screws in, or otherwise mar, deface or alter the plastering, woodwork, or any other part of the leased premises; that they will allow the lessor and his heirs and assigns, and their agents, at all seasonable times to enter upon said premises, and examine the condition thereof, and make necessary repairs, and show the said premises to others, and at any time within three months next before the expiration of said term affix to any suitable part of said premises a notice of letting or selling and keep the same so affixed without hindrance or molestation, and remove placards, signs, awnings and wires not approved and affixed as herein provided; that they will conform to such reasonable regulations as may from time to time be established by the lessor, or by his heirs or assigns, for the general convenience and comfort of the tenants and the welfare of said building; that they will at their own expense replace with the same kind and quality any glass in the premises, including shades belonging to the gas and electric fixtures, that may become injured or broken, unless the same shall be damaged by fire, said glass now being in perfect order; that they will compensate the lessor for any damage done to the walls of the halls or any other part of the building by the lessee, his agents, servants, or others in conveying furniture, merchandise, or any article to or from the demised premises; that they will indemnify and save harmless the lessor from all loss or damage in or about the building of which the demised premises form a part, caused by misuse or carelessness of any member of his household or others; that they will not permit any holes to be drilled or made in the stone, brick, metal or terra cotta work or roof of said building; that they will not allow the halls and stairways to be obstructed or to be used for any other purpose than for ingress and egress to and from their respective apartments; that they will not hold the lessor or his heirs or assigns liable for any damage by water or otherwise to any goods or property on the premises; that they will pay all damages which may result to the building or to

property of tenants below from the leakage of water in or from the suite hereby leased, caused or permitted by the lessee or by his servants, agent or personal representative; that they will not allow the heat or water supplied to the leased premises to be wasted, and will not keep in or about the premises any dog or other objectionable animal after notice by the lessor; that they will, at the end of said term, peaceably deliver up to the lessor, or his heirs or assigns, the leased premises and all erections and additions made to or upon the same, and all keys thereto, in as good order and condition as the same now are or may be put in, ordinary wear and damage by fire or other unavoidable casualty excepted; and that any notice from the lessor to the lessee relating to the demised premises, or the occupancy thereof, shall be deemed duly served if left at the demised premises addressed to the lessee.

Provided also, and these presents are upon this condition, that if the lessee shall neglect or fail to perform or observe any of the covenants contained in this lease, and on the part of said lessee to be performed and observed, or if said lessee shall be declared bankrupt or insolvent according to law, or if any assignment shall be made of his property for the benefit of creditors, then and in any of the said cases (notwithstanding any license or waiver of any prior breach of condition) the lessor lawfully may immediately or at any time thereafter, and without demand or notice enter into or upon the said premises, or any part thereof in the name of the whole, and repossess the same as of his former estate and expel the lessee and those claiming through or under him and remove their effects, (forcibly if necessary) without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenants, and upon entry as aforesaid this lease shall determine.

And it is agreed that in case of a determination of the estate hereby created by an entry for breach of the condition herein contained, the lessee shall indemnify the lessor or his heirs or assigns, for all loss or damage which he may, during the residue of the term above specified, suffer by reason of such determination, whether through decreased rent of said estate or otherwise; and it is also agreed that if the leased premises or any part thereof, shall be damaged by fire or other unavoidable casualty, so as to be thereby rendered unfit for use and occupation, then and in such case the rent hereinbefore reserved, or a just and proportionate part thereof, according to the nature and extent of the injury sustained, shall be abated until the said premises shall have been duly repaired and restored by the lessor or _____ heirs or assigns; or, at the election of the said lessor or _____ legal representatives, this lease may be determined and ended.

In Witness Whereof the said parties hereunto, and to another instrument of like tenor, set their hands and a common seal on the day and year first above written.

Signed and sealed in presence of

(297.)

Country Lease, in use in some Western States.

This Indenture, Made this _____ day of _____ in the year of our Lord one thousand nine hundred and _____, between (*name of lessor*) of the _____ of _____ in the County of _____ and State of _____ party of the first part, and (*name and residence of lessee*) party of the second part, witnesseth, That the said party of the first part for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, his executors, administrators, and assigns, has demised and leased to the said party of the second part all those premises situate, lying and being in the township of _____ County of _____ State of _____ known and described as follows, to wit: (*describe the premises in such way as to identify them perfectly by situation, metes, and bounds, or otherwise*).

To Have and to Hold the said above-described premises, with the appurtenances, unto the said party of the second part, and his executors, administrators, and assigns, from the _____ day of _____ in the year of our Lord one thousand nine hundred and _____, for and during the term of _____, and until the _____ day of _____ in the year of our Lord one thousand nine hundred and _____, paying rent therefor as hereinafter stated.

And the said party of the second part, in consideration of the leasing of the premises aforesaid, by the said party of the first part, to the said party of the second part, does covenant and agree with the said party of the first part, and his heirs, executors, administrators, and assigns, to pay the said party of the first part, as rent for the said demised premises, the sum of _____ dollars, annual rent, payable quarterly, in four equal quarterly payments, the first payment to be due and made in three months from the date of this lease, payable at the (*here state the place where the rent should be paid*).

And the said party of the second part further covenants with the said party of the first part, that at the expiration of the time in this lease mentioned, he will yield up the said demised premises to the said party of the first part, in as good condition as when the same were entered upon by the said party of the second part, loss by fire or inevitable accident, and ordinary wear excepted.

It is further agreed by the said party of the second part, that neither he nor his legal representative will underlet said premises, or any part thereof, or assign this lease, without the written assent of said party of the first part, first had and obtained thereto.

It is Expressly Understood and Agreed by and between the parties aforesaid, that if the rent above reserved, or any part thereof, shall be behind or unpaid, on the day and at the place of payment, whereon the same ought to be paid, as aforesaid, or if default shall be made in any of the covenants herein contained, to be kept by the said party of the second part, his execu-

tors, administrators, and assigns, it shall and may be lawful for the said party of the first part, his heirs, executors, administrators, agent, attorney, or assigns, at his or their election, to declare said term ended, and the said demised premises, or any part thereof, either with or without process of law, to reënter, and the said party of the second part, or any other person or persons occupying, in or upon the same, to expel, remove, and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy, as in his or their first and former estate; and it shall be the duty of the said party of the second part, his executors, administrators, or assigns, to be and appear at the said place above specified, for the payment of said rent, and then and there tender and pay the same as the same shall fall due from time to time, as above, to the said party of the first part, or his agent or assigns; or in his or their absence, if the said party of the second part shall offer to pay the same then and there, such offer shall prevent said forfeiture.

And it is expressly understood that it shall not be necessary in any event for the party of the first part or his assigns, to go on or near the said demised premises to demand said rent, or elsewhere than at the place aforesaid. And in the event of any rent being due and unpaid, whether before or after such forfeiture declared, to distrain for any rent that may be due thereon, upon any property belonging to the said party of the second part, whether the same be exempt from execution or distress by law or not, and the said party of the second part, in that case, hereby waives all legal rights which he now has or may have to hold or retain any such property, under any exemption laws now in force in this State, or in any other way. Meaning and intending hereby to give to the said party of the first part and his heirs, executors, administrators, and assigns, a valid and first lien upon any and all the goods, chattels, or other property belonging to the said party of the second part, as security for the payment of said rent in manner aforesaid, anything hereinbefore contained to the contrary notwithstanding. And if at any time said term shall be ended at such election of said party of the first part, or his heirs, executors, administrators, or assigns, as aforesaid, or in any other way, the said party of the second part, for himself and his executors, administrators, and assigns, does hereby covenant promise, and agree to surrender and deliver up said above-described premises and property, peaceably, to said party of the first part, or his heirs, executors, administrators, and assigns, immediately upon the determination of said term as aforesaid; and if he shall remain in the possession of the same _____ days after notice of such default, or after the termination of this lease, in any of the ways above named, he shall be deemed guilty of a forcible detainer of said demised premises, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated.

And it is further covenanted and agreed by and between the parties, that the party of the second part shall pay and discharge all costs and attorney's fees and expenses that shall arise from enforcing the covenants of this indenture by the party of the first part.

In Testimony Whereof, The said parties have hereunto set their hands and seals the day and year first above written.

(Signature of lessor.) (Seal.)

(Signature of lessee.) (Seal.)

In Presence of

(298.)

A Ground Lease.

This Indenture, Made this _____ day of _____ in the year of our Lord one thousand nine hundred and _____, between (name and residence of lessor) party of the first part, and (name and residence of lessee) party of the second part, witnesseth, That the said party of the first part for and in consideration of the covenants and agreements hereinafter mentioned; to be kept and performed by the party of the second part, hath demised and leased to the party of the second part, all those premises situate in the _____ of _____ in the County of _____ and State of _____, known and described as follows, to wit (*here give such description of the premises as shall identify them, and distinguish them from any other*).

To Have and to Hold, The above described premises, with the appurtenances, unto the party of the second part, from the _____ day of _____ in the year of our Lord one thousand nine hundred and _____ for and during, and until the _____. And the party of the second part, in consideration of the leasing of the premises aforesaid, does covenant and agree with the party of the first part to pay to the party of the first part as rent for said demised premises, at the office of _____ in _____ the sum of (*state the sum to be paid as annual rent*) in four equal quarterly payments, each of them the sum of _____ dollars, to be paid on the first (*or other*) day of the month of (*the four months in which the rent is payable*) in each year (*or describe otherwise the terms and times of the payments as they may have been agreed upon*); and also that the said party of the second part will pay, or cause to be paid, all water-rates, and all taxes, and assessments that may be laid, charged or assessed on said demised premises pending the existence of this lease; or if at any time after any tax, assessment, or water-rate shall have become due or payable, the party of the second part, or his legal representatives, shall neglect to pay such water-rates, tax, or assessment, it may be lawful for the party of the first part to pay the same at any time thereafter, and the amount of any and all such payments so made by the party of the first part shall be deemed and taken, and are hereby declared to be, so much additional and further rent, for the above demised premises, due from and payable by the party of the second part; and may be collected in the same manner, by distress or otherwise, as is hereinafter provided for the collection of other rents to grow due thereon.

The party of the second part further covenants and agrees that he will, within _____ months from the date of this instrument, erect upon the leased premises a building in accordance with certain plans and specifications made by _____, architect, identified by the signatures of the respective parties to this instrument, and hereby made by reference a part thereof; which building, and all materials used or to be used in the construction of

the same which shall at any time during the term of this lease be upon the leased premises, shall at once become the property of the party of the first part, and said building with all its appurtenances of every kind shall from the time when its erection is begun be deemed to be annexed to and become a part of the leased premises and of the freehold estate of the party of the first part therein, subject, however, to the right of the party of the second part to use and occupy the same under the terms and conditions of this lease.

And the party of the second part further covenants with the party of the first part, that, at the expiration of the time in this lease mentioned or of any extension thereof, he will yield up said demised premises with all the buildings and improvements thereon to the party of the first part, in as good condition as when the same were entered upon by the party of the second part, or in which they shall be put by the erection of the building hereinbefore agreed to be placed thereon, loss by fire, or inevitable accident and ordinary wear excepted.

It is further agreed by the party of the second part, that neither he nor his legal representatives will underlet said premises, or any part thereof, or assign this lease, without the written assent of said party of the first part first had and obtained thereunto, nor use or suffer them to be used for any purpose calculated to injure the reputation of the premises, or of the neighborhood, or to impair the value of the surrounding neighborhood property for present use or otherwise.

It is Expressly Understood and Agreed, By and between the parties aforesaid, that if the rent above reserved, or any part thereof, shall be behind or unpaid on the day of payment whereon the same ought to be paid, as aforesaid, or if default shall be made in any of the covenants herein contained to be kept by the party of the second part, executors, administrators, or assigns, it shall and may be lawful for the party of the first part, or his heirs, executors, administrators, agent, attorney, or assigns, at his or their election, to declare said term ended, and into the said demised premises, or any part thereof, either with or without process of law, to reënter, and the party of the second part or any other person or persons occupying, in or upon the same, to expel, remove, and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy, as of his or their first and former estate; and to distrain for any rent that may be due thereon, upon any property belonging to the party of the second part, whether the same be exempt from execution and distress by law or not; and the party of the second part, in that case, hereby waives all legal rights which he now has or may have, to hold or retain any such property under any exemption laws now in force in this State, or in any other way; meaning and intending hereby to give the party of the first part, his heirs, executors, administrators, agent, attorney, or assigns, a valid and first lien upon any and all the goods, chattels, or other property belonging to the party of the second part, as security for the payment of said rent, in manner aforesaid, anything hereinbefore contained to the contrary notwithstanding. And if at any time said term shall be ended at such election of said party of the first part, or his heirs, executors, administrators, agent, attorney, or assigns,

as aforesaid, or in any other way, the party of the second part does hereby covenant and agree to surrender and deliver up said above described premises and property peaceably to the party of the first part, or his heirs, executors, administrators, agent, attorney, or assigns, immediately upon the determination of said term as aforesaid; and if the said party of the second part, or his legal representatives, shall remain in possession of the same one day after notice of such default, or after the termination of this lease, in any of the ways above named, he or they shall be deemed guilty of a forcible detainer of the premises, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated.

And it is further understood and agreed by the said party of the second part, that neither the right given in this lease, to said party of the first part, to collect the rent that may be due under the terms of this lease by sale, or any proceedings under the same, shall in any way affect the right of said party of the first part to declare this lease void, and the term hereby created ended, as above provided upon default made by said party of the second part.

And the said part of the first part hereby waives his right to any notice from said party of the second part, of his election to declare this lease at an end, under any of its provisions, or any demand for the payment of rent, or the possession of premises leased herein; but the simple fact of the non-payment of the rent reserved shall constitute a forcible entry and detainer as aforesaid.

And said party of the second part further agrees not to remove any buildings or other improvements from said premises, without written consent of said party of the first part, and that the said second party shall pay and discharge all costs and attorney's fees and expenses that shall arise from enforcing the covenants of this indenture, by the party of the first part.

It is Further Understood and Agreed, That, on written notice being given by the party of the second part to the party of the first part, not less than thirty days before the expiration of the term of this lease, this lease shall be extended for the further term of _____ years, the rent for such extended term to be at the rate of _____ dollars per annum, and at the same rate for all such time after the expiration of the term of this lease, or after the expiration of such extension, as the party of the second part shall occupy said premises, whether as tenant at will or at sufferance, or otherwise, and that in case of such extension all the terms and conditions of this lease, so far as applicable, except the right of renewal, shall continue to be in full force and effect.

It is Further Understood and Agreed, That all the conditions and covenants contained in this lease shall be binding upon the heirs, executors, administrators, and assigns of the parties to these presents respectively.

Is Testimony Whereof, The said parties have hereunto set their hands and seals, the day and year first above written.

(Signature of lessor.) (Seal.)

(Signature of lessee.) (Seal.)

Signed, Sealed, and Delivered in Presence of

(299.)

Assignment of Lease and Ground Rent.

This Indenture, Made the _____ **day of** _____ **in the year of our**
Lord one thousand nine hundred and _____, **between** (*name and residence*
of the assignor) party of the first part, and (*name and residence of the as-*
signee) party of the second part, witnesseth, That the said party of the first
 part, for and in consideration of the sum of _____ dollars, lawful money
 of the United States of America, unto him in hand well and truly paid by
 the said party of the second part, at the time of the execution hereof, the
 receipt whereof is hereby acknowledged, by these presents does grant, bar-
 gain, sell, assign, release, and confirm unto the said party of the second part
 a certain indenture, made and executed on the _____ day of _____ in
 the year of our Lord nineteen hundred and _____ whereby the said party
 of the first part leased to one (*name of the lessee in the lease here assigned*)
 certain premises therein described as follows (*here copy the description of*
the premises in that lease) reserving a certain rent, payable to said party
 of the first part; that is to say (*here state the rent reserved in that lease*)
 payable (*here state the times and terms of payment*) together with the said
 rent to the said party of the first part, payable as aforesaid.

Together with all right and power of entry and distress and of reentry,
 and all other the covenants, ways, means, and remedies for the recovery
 thereof, and all and singular the rights, incidents, and appurtenances what-
 soever, thereunto belonging, and the reversions and remainders thereof, and
 all the estate, right, title, interest, property, claim, and demand whatsoever,
 of him the said party of the first part, or his legal representatives, either
 in law or equity, as well of, in, and to the said yearly rent or sum hereby
 granted and assigned, as also of, in, and to the said lot or piece of
 ground, with the appurtenances, for and out of which the same rent is issu-
 ing and payable.

To Have and to Hold, receive and take, all and singular the hereditaments
 and premises hereby granted and assigned, with the rights, remedies, inci-
 dents, and appurtenances, unto the said party of the second part, his heirs
 and assigns, to and for the only proper use and behoof of him the said party
 of the second part, his heirs and assigns forever. And the said party of
 the first part, and his heirs, all and singular the hereditaments and premises
 hereby granted and assigned, with the rights, remedies, incidents, and ap-
 purtenances, unto the said party of the second part, and his heirs and as-
 signs, against him the said party of the first part and his heirs, and against
 all and every other person and persons whosoever, lawfully claiming or to
 claim, by, from, or under him or them, or any of them, shall and will war-
 rant and forever defend by these presents.

In Witness Whereof, The said parties to these presents have hereunto
 interchangeably set their hands and seals the day and year hereinbefore first
 written.

(Signature of the assignor.) (Seal.)

(Signature of the assignee.) (Seal.)

Signed, Sealed and Delivered in the Presence of

(Witnesses.)

(300.)

A Building Lease.

This Deed of Lease, Made and entered into, in duplicate, this _____ day of _____, A. D. 19____, between (*name of lessor*) of _____ County of _____ and State of _____ party of the first part, and (*name of lessee*) of _____ County of _____ and State of _____, party of the second part:

Witnesseth, That the said party of the first part, in consideration of the covenants, agreements, and stipulations hereinafter mentioned, as well as the yearly rent of _____ dollars, to be paid to him in four equal quarterly payments in each year (the first payment to be made on the _____ day of _____, A. D. 19____), doth by these presents lease to the said party of the second part for the term of _____ years, which said term begins on the _____ day of _____, 19____, the following-described lot of land, to wit (*here describe the premises*).

The said party of the second part, for himself and his heirs, hereby covenants with said lessor and his heirs to pay said rent as aforesaid, and also to pay all city, county, and State taxes, and all other taxes and demands of every description, nature, or kind whatever, which may from time to time be legally required or demanded of said premises, whether general tax or special tax.

Every failure, first, to pay the said rent, or any part thereof, when it is respectively made payable; or, second, to pay the said city, county, and State taxes, and all other taxes and demands, or any part thereof (legally required or demanded of said premises, within the year the same shall become due, assessed to either said lessor, his heirs or representatives, or to said lessee or his representatives); or, third, to keep and perform any of the other covenants, agreements, or stipulations herein mentioned, shall make and create a forfeiture of this lease, and a termination of the term for which the above premises were let, and all the estate hereby conveyed shall be absolutely void, if so determined, at any day or time however distant, after such failure, by notice in writing to that effect, given by said lessor, his heirs or assigns, to said lessee or his assigns; which said notice may be served by posting a copy or duplicate of the same up at one of the most public places on said premises, or by delivering a copy or duplicate of such notice to said lessee or his assigns.

This lease of said premises, or any part thereof, is not to be assigned, under penalty of forfeiture, without the written consent of said lessor, his heirs or assigns. At the expiration of this lease, the said premises to be delivered to said lessor, his heirs or assigns. The said lessee, and all who hold under him, hereby engage to pay double rent for every day they or any one else in their name shall hold on to the whole or any part of said premises, after the expiration of this lease, or after forfeiture thereof.

The said lessee is, under penalty of forfeiture, bound to keep said premises free from any disorderly, bawdy, or gambling establishments, dram-shops, tippling-shops, beer-houses, or any nuisances whatsoever. And in case of any forfeiture of this lease, the said lessor, his heirs and assigns, may

forthwith take possession of said premises, with all the improvements thereon, and shall be entitled to the same, any custom, usage, or law to the contrary notwithstanding.

All improvements erected on said premises by said lessee or his assigns, or by any one who may claim under them, are bound for the payment of each quarterly instalment of rent, and for the city, county, and State taxes, and all other taxes and demands as aforesaid, and for any arrears of rent or taxes; and in case of the punctual payment of the rent and taxes, as herein specified, the said lessee or his assigns is hereby authorized to remove all such improvements (and no others), at the expiration of this lease, which he or any one who may claim under him, may have erected on said premises during said term.

In Testimony Whereof, The parties hereto have hereunto set their hands and seals to duplicate leases the day and year aforesaid.

(Signature of lessor.) (Seal.)

(Signature of lessee.) (Seal.)

In Presence of

(301.)

A Mining Lease.

This Indenture, Made this _____ day of _____ in the year of our Lord one thousand nine hundred and _____, between (*name and residence of the lessor*) of the first part, and (*name and residence of the lessee*) of the second part, witnesseth, That the said party of the first part, for and in consideration of the covenants and agreements hereinafter contained on the part of the said party of the second part, and one dollar in hand paid to the said party of the first part, the receipt whereof is hereby acknowledged, has granted and conveyed, and by these presents does grant and convey to the said party of the second part, his heirs, executors, administrators, and assigns, the right of entering in and upon the lands hereinafter described, for the purpose of searching for mineral and fossil substances, and of conducting mining and quarrying operations, to any extent he or they may deem advisable, (but not to hold possession of any part of said lands for any other purpose whatsoever) paying for the site of buildings of any kind, necessary thereto, a reasonable rent.

The said lands are situated (*here state the situation of the premises leased, and describe them by metes and bounds, dimensions, and references to other boundaries, so as to distinguish them perfectly*).

And the said party of the second part hereby agrees that he or his heirs, executors, administrators, or assigns, will pay or cause to be paid to the said party of the first part, his heirs or assigns, an annual rent of the amount of _____ dollars, in four equal quarterly payments, payable severally on the following days (*here state the days when the payments are to be made, or whatever other terms or times are agreed upon*) and also covenants that no damage shall be done to or upon said lands and premises, other than may be necessary in conducting said operations. And it is agreed and covenanted by and between the parties hereunto, that this lease shall be and remain in full force and effect (subject to the proviso hereinafter stated) _____

years from the date hereof, and no longer. But the said parties of the first and the second part, each for themselves, their heirs, executors, administrators, and assigns, covenant and agree, and this indenture is made with this express proviso, that if no mineral or fossil substance be mined or quarried, as now contemplated by said parties, within the period of _____ years from the present time, then these presents, and everything contained herein, shall cease and be forever null and void.

In Testimony Whereof, The parties to these presents have hereunto set their hands and seals the day and year first above written.

(Signature of lessor.) (Seal.)

(Signature of lessee.) (Seal.)

Signed, Sealed, and Delivered in Presence of

(302.)

Lease of Land supposed to contain Oil, Salt, or other Minerals.

Articles of Agreement, Made and concluded this _____ day of _____, A. D. 19____, between (*name of lessor*) of the township of _____, County of _____, and State of _____, party of the first part, and (*name and residence of the lessee*) party of the second part. Witnesseth, That the said party of the first part, for himself and his heirs, executors, administrators, and assigns, for and in consideration of the sum of one dollar, the receipt of which is hereby acknowledged, and for the further consideration hereinafter mentioned, and on account of covenants hereinafter contained, hereby leases to the said party of the second part, his heirs, executors, administrators, and assigns, the following-described piece or parcel of land, situated in the township of _____, County of _____, and State of _____, bounded and described as follows (*describe the premises as in the preceding Form*); the said land being more fully described in deed of conveyance by (*name of the grantor to the lessor*) to the said party of the first part, containing _____ acres, more or less, for the purpose of boring, mining, and operating for oil, salt, and other minerals on said land, for the term of _____ years.

Said second parties to have the exclusive right to mine for oil, salt, and other minerals, on said land, during the continuance of said term; to have the privilege of taking sufficient coal and wood for conducting said boring and mining operations, and timber for derricks and mill-frames and for refineries, and the right to erect all necessary buildings upon said premises for carrying on the business of boring for oil, and mining, refining, and storing away oil and other minerals; and to have the necessary roads to and from any well or wells that may be bored, or any mines; and to have possession whenever they shall be ready to commence operations. And in case they are successful in obtaining oil or other minerals, they agree to deliver to the said party of the first part (*here state the part or proportion which is to be given to the lessor*) of all oil, salt, or other minerals obtained. Said party of the first part to find his own barrels, and remove the oil and other minerals belonging to him, as often as required by the second parties. And in case said second parties should not be successful in obtaining oil or other

minerals, they shall have the right to remove all engines, tools, machinery, and buildings. And further, it is agreed that said second parties have the right to sub-lease said land for the purpose of boring for oil or other minerals; the said lessee or lessees being granted all the rights and privileges herein granted to the said party of the second part.

Witness our hands and seals this _____ day of _____, 19____

(Signature of lessor.) (Seal.)

(Signature of lessee.) (Seal.)

Witnesses.

(303.)

Lease of a Farm, reserving Timber.

This Indenture, Made this _____ day of _____, 19____, between _____ of _____, hereinafter called the lessor, which expression shall also include his heirs, executors, and assigns, of the one part, and _____ of _____ hereinafter called the lessee, which expression shall also include his executors, administrators and assigns, of the other part, witnesseth, That the said lessor doth hereby lease and demise unto the said lessee all that farm and lands in the town of _____ in the county of _____ and State of _____ known as the _____ farm, with the farm house and other buildings thereon, bounded and described as follows, viz: (*here insert a description sufficient to identify the property intended to be leased, but not necessarily as minute as that required in a deed*); excepting and reserving out of this demise all timber and other trees, and the right to enter and cut the same: To hold the said premises, except as aforesaid, for the term of _____ years, from the date of these presents; yielding and paying rent therefor, during the said term, the yearly rent of _____ dollars, clear of all deductions, by equal half-yearly payments on the _____ day of _____ and the _____ day of _____ in every year, the first of such payments to be made on the _____ day of _____, 19____

And the lessee doth covenant with the lessor that he, the lessee, during the said term will pay all taxes, rates and assessments, now payable, or hereafter to become payable in respect of the said premises, on any part thereof; that he will keep the said premises insured against loss or damage by fire in the name and for the benefit of the lessor, in such insurance company as the lessor shall approve; and will, when required, exhibit to the lessor the policy of insurance, and the current year's receipt for the premium therein; that he will keep the said farm-house and buildings, and all things in and about the same, and all fences, ditches, drains, watercourses, gates, fixtures and things upon or about the said farm and lands, in good condition and complete repair, and without any alteration, except such as the lessor shall approve; that he will cultivate, manure, and manage the said farm and lands in a fair and proper manner, according to the most approved course of husbandry; that he will, at the expiration or sooner determination of said term, yield up the said premises to the lessor in such good condition and repair, and in such fair and proper order as the same are now in; and that the lessor and his agents and workmen, may at all reasonable times during the said term, enter upon the said premises to inspect the same, and to

cut and remove timber and other trees; and that he will not assign or underlet the said premises, or any part thereof, without the consent in writing of the lessor: Provided always, that on any breach of any of the covenants by the lessee herein contained, the lessor may reënter upon the said premises, and immediately thereupon the said term shall absolutely determine. And the lessor doth hereby covenant with the lessee that the lessee, performing and observing all the covenants by the lessee herein contained, may quietly hold and enjoy the said premises during the said term, without any interruption by the lessor, or any person claiming through him.

In Witness Whereof, etc.

For another form of farm lease see chapter on Rights of Farmers, p. 832.

(304.)

Assignment of a Lease.

Know all Men by these Presents, That I (*name and residence of assignor*) for and in consideration of the sum of _____ dollars, lawful money of the United States, to me duly paid, by (*name and residence of assignee*) have sold, and by these presents do grant, convey, assign, transfer and set over, unto the said (*name of assignee*) a certain indenture of lease, bearing date the _____ day of _____ in the year one thousand nine hundred and _____ made by (*name of the lessor in the lease assigned*) whereby he leases to me the following-described premises (*here describe the premises briefly*), with all and singular the premises therein mentioned and described, and the buildings thereon, together with the appurtenances.

To Have and to Hold the same unto the said (*the name of the assignee*) and his assigns, from the _____ day of _____ for and during all the rest, residue, and remainder yet to come of and in the term of _____ years mentioned in the said indenture of lease, and all my rights and privileges in and under said lease; subject nevertheless to the rents, covenants, conditions, and provisions therein also mentioned. And I do hereby covenant, grant, promise, and agree to and with the said (*name of the assignee*) that the said assigned premises now are free and clear of and from all former and other gifts, grants, bargains, sales, leases, judgments, executions, back rents, taxes, assessments, and incumbrances whatsoever.

In Witness Whereof, etc.

Scaled and Delivered in the Presence of

If the landlord's assent to the assignment be necessary, add:

I assent to the foregoing assignment.

(Signature of Landlord.)

(305.)

Application to Landlord for Leave to Assign or Underlet.

To _____

Pursuant to a stipulation contained in a lease dated _____ wherein the premises therein described were demised by _____ to me for the term of _____ years from the date thereof, I hereby apply to you for license and

authority to assign said lease (or underlet said premises) to _____ of _____ for the remainder of my term, together with all my interest in said premises.

Dated, etc.

(306.)

Notice to Landlord of Assignment.

To _____

I hereby give you notice that, by an instrument in writing dated _____, I have assigned to _____ of _____ all my right, title and interest in and to the premises described and demised in a certain lease made by _____ to _____ and dated _____ for the unexpired residue of the term created by said lease.

Dated, etc.

(307.)

Landlord's Notice to Quit for Non-Payment of Rent.

STATE OF _____ }
COUNTY OF _____ } ss. _____, 19__

To (name of tenant). You being in possession of the following-described premises, which you occupy as my tenant (*here describe the premises sufficiently to identify them*) in the city (or township) of _____ and county _____ aforesaid, are hereby notified to quit and deliver up to me the premises aforesaid, in fourteen days from this date, according to law, your rent being due and unpaid. Hereof fail not, or I shall take due course of law to eject you from the same.

(Witness.)

(Signature.)

(308.)

Landlord's Notice to leave at End of the Term.

To (name and address of the tenant).

SIR,—You being in the possession of a certain messuage or tenement, with the appurtenances, situate (*describe the premises briefly*) which said premises were demised to you by me for a certain term, to wit, from the _____ day of _____, A. D. 19__, until the _____ day of _____, A. D. 19__, and which said term will terminate and expire on the day and year last aforesaid, I hereby give you notice, that it is my desire to have again and repossess the said messuage or tenement, with the appurtenances, and I therefore do hereby require you to leave the same upon the expiration of the said hereinbefore mentioned term.

Witness my hand this _____ day of _____, city of _____, A. D. 19__

(Signature.)

(Witness.)

(309.)

Landlord's Notice to Determine a Tenancy at Will.

_____, 19____
 To (*name of tenant*). You being in possession of the following-described premises in the town (or city) of _____, which you occupy as my tenant at will (*describing them sufficiently to identify them*), are hereby notified to quit and deliver up to me the premises aforesaid (*on such a day, stating here the day as far distant as is made necessary by the requisite length of notice*) according to law, it being my intention to determine your tenancy at will. Hereof fail not, or I shall take a due course of law to eject you from the same.

(Signature.)

(Witness.)

(310.)

The Same; Another Form.

I hereby give you notice to quit and deliver up to me on the _____ day of _____, 19____, the premises now held by you as my tenant, at No. _____, on _____ Street in the city of _____.

Dated this _____ day of _____, 19____.

(311.)

Same; Where Commencement of Tenancy is Uncertain.

I hereby give you notice to quit and deliver up to me at the expiration of that month (or week, or quarter) of, your tenancy which shall begin next after this date, the premises now held by you as my tenant at _____.

Dated, etc.

(312.)

Tenant's Notice to Terminate Tenancy at Will.

I hereby give you notice that on the _____ day of _____ next I shall quit and deliver up possession of the premises at No. _____ in _____ Street in the city of _____ which I now hold of you as tenant.

(313.)

Lessee's Notice to Tenant to Quit.

I hereby notify you that _____ has executed a written lease to me of the premises now occupied by you at No. _____, _____ Street in the city of _____, for the term of _____ years from _____.

As I desire immediate possession of the said premises, you will please vacate them without delay.

(314.)

Guaranty of Rent under Lease.

In consideration of the execution of the foregoing lease by the lessor, at my request, and of one dollar to me in hand paid, I hereby guarantee the punctual payment of the rent and the performance of all the covenants and agreements on the part of the lessee in said lease, or in any extension or renewal thereof, demand and notice of default or of non-payment being hereby waived.

Witness my hand and seal this _____ day of _____, 19____.

(315.)

Lease in use in the Province of Quebec.

On this day, the _____ of _____ in the year of our Lord one thousand nine hundred and _____ before the undersigned Public Notary, duly commissioned and sworn in and for the heretofore Province of Lower Canada, now the Province of Quebec, in the Dominion of Canada, residing in the city of Montreal, in the said Province, appeared (*name, residence, and occupation of the lessor*) who declared to have let and leased, and by these presents doth let and lease, and promise to procure peaceable enjoyment unto (*name, residence, and occupation of lessee*) present and accepting lease for _____ for, during, and until the full end and term of _____ to be accounted and reckoned on and from the _____ day of the month of _____ in the year _____ (*insert a description of the premises leased*). With the whole the said lessee is content and satisfied, having seen and viewed the same.

The present lease is thus made for and in consideration of the sum of _____ current money of the said Province of Canada, per year during the said term, which the said lessee does hereby covenant, promise, and agree, and bind and oblige himself to well and truly pay, or cause to be paid, to the said lessor or his legal representatives, in and by even and equal quarterly payments of _____ each; the first payment whereof to become due and payable on the _____ day of _____ now next ensuing, and thus to continue as aforesaid during all the said term; and, in further consideration, that the said lessee shall and doth hereby promise and agree, and bind and oblige himself to pay the railway tax, the park tax, the school tax, the water tax, the yearly assessments of said leased premises, and every other tax, charge, and burden which may be imposed or levied thereon, during the said term; and, further, that the said lessee shall furnish the said leased premises with a sufficient quantity of household furniture or goods to secure the payment of the said rent, keep the premises in repairs (*réparations locatives*), during the said term, and deliver the same at the expiration of the present lease in as good order, state, and condition as the same may be found in at the commencement of the same, reasonable tear and wear and accidents by fire excepted.

It is expressly agreed by and between the said parties that the said lessee shall not transfer his right in the present lease, or sublet any part or

portion of the above rented premises, without the consent, in writing, of the said lessor or his representatives.

The said lessee shall not make any alteration in the said leased premises without the consent of the said lessor or his representatives; and, in case any such alterations should be made, then the said lessee shall be bound to put the said leased premises in the same state in which they were at the commencement of the present lease, unless the said lessor prefer that the said alterations should remain, without any compensation being allowed to the said lessee for such alteration.

Should any *grosses réparations* be deemed necessary in the said leased premises, the said lessee shall permit the same to be performed, without pretending or demanding any reduction in the said rent, damages, interest, or compensation; provided always, that the said repairs be indispensable, and be finished within a reasonable time.

The said lessee shall, during the said term, conform to the rules and regulations of police, and pay the sweeping of the chimneys of said leased premises during the said term. The said lessee shall, during the last three months of the present lease, allow such person or persons as may be desirous of obtaining a lease of the said premises to visit the same, and will suffer handbills for that purpose to be placarded and left on the said premises.

The said lessee shall pay all extra premiums of assurance that the company, at which the premises now leased may be insured, shall exact in consequence of the business or works done and carried on therein by the said lessee.

And for the execution hereof the said parties to these presents have elected domiciles; to wit, the said lessee at and upon the premises now leased, and the said lessor at his place of residence above described, where, etc.

Done and Passed at the said city of Montreal, in the office of _____ the said notary, under the number _____ thousand _____ hundred and _____ on the day, month, and year first above and before written, and signed by the said _____ with and in the presence of _____ said notary, these presents having been first duly read to the said parties by said notary.
(Signatures.) (Seals.)

(316.)

Lease in use in the Province of Quebec, known as a "Private Lease."

This Indenture of Lease, Made between (*name, residence, and occupation of lessor*), of the first part, and (*name, residence, and occupation of lessee*) of the second part,

Witnesseth, That the said _____ doth hereby lease for the term of _____ years, from the _____ unto _____ the said _____ hereby present and accepting for _____ that is to say (*here describe the premises leased with sufficient distinctness*) the said leased premises being well known to the said lessee, he having seen and examined the same before the execution of these presents, and with the said leased premises is content and satisfied. This lease is thus made subject to the following stipulations: viz,

that the lessee shall make all repairs customarily made by tenants, during the present lease, and at the termination thereof shall peaceably surrender the said premises in the like condition as when taken possession of, reasonable tear and wear being allowed; that he shall constantly keep the hereby leased premises furnished according to law for the security of the rent hereinafter stipulated; that he shall not make over his interest in the present lease, or sublet the whole or any part of the premises hereby leased, without the consent of the lessor being first obtained in writing for that purpose.

The said lessee promises to pay the yearly taxes or assessments for and during the said term, at whatever rate or amount or for whatever purpose the same may be levied, school tax and all other taxes and assessments, and perform all the requirements of the police and fire departments, to the perfect exoneration of the lessor; and during the last three months of the present lease shall allow such person or persons as may be desirous of obtaining a lease of the said premises, to visit the same at seasonable hours; and shall also permit notices of such intended lease to be put up on the premises.

The lessee shall also pay any and all extra premiums levied in consequence of the business that may be carried on by him.

It is especially and distinctly understood and agreed by and between the parties, that the furniture, goods, chattels, and effects of every kind and description belonging to the lessee shall be security for the payment of the rent for the entire term, and shall not be removed from the said leased premises until the rent for the whole term be paid, even if not due, any law, usage, or custom to the contrary notwithstanding, for without this condition the present lease would not have been made; nothing herein contained to be deemed or construed as comminatory or evasive, but of rigor.

This lease is further made in consideration of the sum of _____ current money of this Province, which the said lessee binds and obliges himself to well and truly pay to the said lessor or his lawful representatives, in equal monthly payments of _____, the first payment whereof to be due and payable on the _____ next.

Signed in duplicate, at Montreal, this _____ day of _____ in the year of our Lord one thousand nine hundred and _____ in the presence of _____

(Signatures.) (Seals.)

(317.)

Lease of Land in use in Ontario and Other Provinces.

This Indenture, Made the _____ day of _____ in the year of our Lord one thousand nine hundred and _____, between (name, residence, and occupation of the lessor), the party of the first part, and (name, residence, and occupation of lessee) the party of the second part,

Witnesseth, That in consideration of the rent, covenants, and agreements hereinafter reserved and contained, and to be paid, observed, and performed by the said party of the second part, his executors, administrators, and assigns, _____ the said party of the first part has demised and leased, and by these presents doth demise and lease, unto the said party of the sec-

ond part, his executors, administrators, and assigns, all that certain parcel or tract of land and premises situate, lying, and being (*describe premises leased with sufficient distinctness to identify them perfectly*).

To Have and to Hold the said parcel or tract of land, with the appurtenances, unto the said party of the second part, his executors, administrators, and assigns, from the _____ day of _____, one thousand nine hundred and _____, for the term of _____ from thence next ensuing, and fully to be completed and ended, yielding and paying therefor unto the said party of the first part, his executors, administrators, and assigns, the yearly rent or sum of _____ of lawful money of Canada, by equal quarterly payments, on the _____ in each and every year during the said term, the first payment to be made on the _____ day of _____ next ensuing the date hereof.

And the said party of the second part doth hereby for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree with and to the said party of the first part, his heirs, executors, administrators, and assigns, that he, the said party of the second part, his executors, administrators, and assigns, shall and will well and truly pay, or cause to be paid, to the said party of the first part, his executors, administrators, or assigns, the said yearly rent hereby reserved, at the times and in manner hereinbefore mentioned for payment thereof, without any deduction or abatement whatsoever thereout, for, or in respect of, any rates, taxes, and impositions, assessments, or otherwise; and will, during said term, discharge and pay all rates, taxes, assessments, and impositions now payable or hereafter to become payable in respect of said premises; and also shall and will perform all statute labor in respect of said premises, during the whole of the term hereby granted.

Provided always, and it is hereby agreed by and between the said parties hereto, that if, at any time or times during the said term, the said rent, or any part thereof, shall be in arrear and unpaid for the space of thirty days after any of the days or times whereon the same ought to be paid as aforesaid, then it shall be lawful for the said party of the first part, his heirs, executors, administrators, or assigns, to enter into and take possession of the premises hereby demised, whether the same be lawfully demanded or not, and the said premises to have again, repossess, and enjoy, as if these presents had never been executed, without the let, hindrance, or denial of him, the said party of the second part, his heirs, executors, administrators, or assigns; and, further, that the non-fulfilment of the covenants hereinbefore mentioned, or any of them, on the part of the lessee or lessees, shall operate as a forfeiture of these presents, and the same shall be considered null and void to all intents and purposes whatsoever; and also, that the said party of the second part, his executors, administrators, and assigns, shall not nor will, during the said term, grant or demise, or assign, transfer, or set over, or otherwise, by any act or deed, procure or cause the said premises hereby demised or intended so to be, or any part thereof, or any estate, term, or interest therein, to be granted, assigned, transferred, underlet, or set over unto any person or persons whosoever, nor carry on any offensive trade or

business on the premises, without the consent in writing, of the said party of the first part, his heirs or assigns, first had and obtained.

And the said party of the second part doth hereby for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree, with and to the said party of the first part, his heirs, executors, administrators, or assigns, that he, the said party of the second part, his heirs, executors, administrators, or assigns, will, at the end of the term hereby granted, peaceably and quietly surrender and deliver up possession of the said premises hereby demised to the said party of the first part, his heirs, executors, administrators, or assigns.

In Witness Whereof, The parties to these presents have hereunto set their hands and seals the day and year first above written.

(Signatures.) (Seals.)

Signed, Sealed, and Delivered in the Presence of

(318.)

Short House Lease in use in Ontario and other Provinces.

This Indenture, Made the _____ day of _____ in the year of our Lord one thousand nine hundred and _____ in pursuance of the act respecting short forms of leases between (*name, residence, and occupation of the lessor*) hereinafter called the lessor, of the first part, and (*name, residence, and occupation of the lessee*) hereinafter called the lessee, of the second part,

Witnesseth, That in consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the said lessee, his executors, administrators, and assigns, to be paid, observed, and performed, he the said lessor hath demised and leased, and by these presents doth demise and lease unto the said lessee, his executors, administrators, and assigns, all that certain (*describe the premises leased with sufficient minuteness to define them perfectly*).

Together with all the rights, members, and appurtenances whatsoever to the said premises belonging or appertaining.

To Have and to Hold the said demised premises, with their appurtenances, unto the said lessee, his executors, administrators, and assigns, for and during the term of _____ to be computed from the _____ day of _____, one thousand nine hundred and _____ and from thenceforth next ensuing, and fully to be completed and ended, yielding and paying therefor yearly and every year, during the said term hereby granted, unto the said lessor, his heirs, executors, administrators, or assigns, the sum of _____ dollars of lawful money of Canada, to be payable on the following days and times; that is to say, _____ on the first days of January, April, July and October in each year during the said term, the first of such payments to become due, and be made, on the _____ day of _____ next, and the last of such payments to be made in advance, on the day of payment of rent preceding the expiration of the said term.

And the said lessee covenants with the said lessor to pay rent, and to pay taxes, and to repair (reasonable wear and tear, and accidents by fire or

tempest excepted), and to keep up fences, and not to cut down timber; and that the said lessor may enter and view the said repairs; and that the said lessee will repair according to notice, and will not assign or sublet without leave, and will not carry on any business that shall be deemed a nuisance on said premises; and that he will leave the premises in good repair. (*If there are any other agreements between the parties, they should be inserted here.*)

And also, that if the term hereby granted shall be at any time seized, or taken in execution, or in attachment, by any creditor of the said lessee, or if the said lessee shall make any assignment for the benefit of creditors, or, becoming bankrupt or insolvent, shall take the benefit of any act that may be in force for bankrupt or insolvent debtors, the said term shall immediately become forfeited and void, and the full amount of the current _____ rent shall be at once due and payable; and also, that if the said premises be destroyed, or so much injured as to become unfit for occupation, by fire or other casualty, not caused by the wilful default or neglect of the said lessee, his executors, administrators, or assigns, the said term hereby demised shall cease, and the current quarterly rent shall be fully apportioned, and the due proportionate part thereof shall be at once due and payable.

Proviso for reentry by the said lessor on non-payment of rent or non-performance of covenants, or seizure or forfeiture of the said term for any of the causes aforesaid; the said lessor covenants with the said lessee for quiet enjoyment.

In Witness Whereof, The said parties to these presents have hereunto set their hands and seals.

Signed, Sealed, and Delivered in the Presence of

(319.)

Lease of Land in use Generally in the British Provinces.

This Indenture, Made the _____ day of _____ in the year of our Lord one thousand nine hundred and _____, between (*name, residence, and occupation of the lessor*) of the one part, and (*name, residence, and occupation of the lessee*) of the other part,

Witnesseth, That for and in consideration of the rents, covenants, agreements, and provisos hereinafter reserved and contained, and which by and on the part and behalf of the said _____, his executors, administrators, and assigns, are to be paid, kept, done, and performed, he the said _____ hath granted, demised, leased, set, and to farm letten, and by these presents doth grant, demise, lease, set, and to farm let, unto the said _____, his executors, administrators, and assigns, all that tract, piece, or parcel of land situate, lying, and being on lot or township number _____ in the County of _____, and the Province of _____, bounded and described as follows; that is to say (*here describe the premises leased*) containing, by estimation, _____ acres, be the same a little more or less, together with all buildings, woods, underwoods, ways, waters, watercourses, profits, commodities, privileges, advantages, and appurtenances whatsoever to the said premises belonging, or in anywise appertaining.

To Have and to Hold the said tract, piece, or parcel of land, and premises hereby demised, with their appurtenances, unto the said _____, executors, administrators, and assigns, from the _____ day of _____ for and during and until the full end and term of _____ years from thence next ensuing, and fully to be complete and ended; subject, nevertheless, to the quit-rents to become due, exceptions, reservations, covenants, easements, and conditions in the original grant or letters-patent of the said premises reserved and contained. Yielding and paying therefor yearly, and in every year during the said term hereby granted, unto the said _____, his heirs or assigns, the clear yearly rent or sum of _____ without making any deduction or abatement whatever for or in respect of any present or future quit-rents, land taxes, or other parliamentary, legislative, colonial, or parochial taxes, assessments, payments, or impositions whatsoever, by yearly payments; that is to say, on the _____ day of _____ in every year, the first payment to become due and be paid on _____ day of _____. And the said _____ doth for himself and his heirs, executors, and administrators, covenant, promise, and agree to and with the said _____, his heirs and assigns, in manner following; that is to say, that he the said _____, his executors, administrators, and assigns, shall and will, from time to time, and at all times during the continuance of the term hereby granted, well and truly pay, or cause to be paid, unto the said _____, his heirs and assigns, the said yearly rent hereby reserved, upon the days and times, and in the manner hereinbefore mentioned for the payment of the same, according to the true intent and meaning of these presents. And also, that he, the said _____, his executors, administrators, and assigns, shall and will pay, satisfy, and discharge, or cause to be paid, satisfied, and discharged, all and all manner of quit-rents, land taxes, and other parliamentary, legislative, or parochial taxes, rates, assessments, payments, or impositions whatsoever, now or at any time hereafter during the said term, hereby demised, payable, or to become payable, for or in respect of the said premises, or any part of them, or the said yearly rent or any part thereof.

Provided always, nevertheless, and these presents are upon this express condition, that if the said yearly rent hereinbefore reserved, or any part thereof, shall be in arrear for the space of _____ after the same ought to have been paid as aforesaid (although no legal or formal demand shall have been made for the same), that then, and in every such case, and at all times hereafter, it shall and may be lawful to and for the said _____, his heirs and assigns, either to sue or distrain for the same, or into or upon the said demised premises, or into any part thereof, in the name of the whole, wholly to reënter, and the same to have again, retain, repossess, and enjoy, as in their former state; and the said _____ and other occupiers and possessors thereof, thereout and from thence utterly to expel, put out, and remove, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. And the said _____ for himself, his heirs and assigns, doth hereby covenant, promise, and agree to and with the said _____, executors, administrators, and assigns, that he paying the said yearly rent hereby reserved, and performing the covenants and agreements hereinbefore mentioned and contained, and which on his part and behalf are or ought to be

paid, done, and performed (subject, nevertheless, as aforesaid), shall and may peaceably and quietly have, hold, use, occupy, possess, and enjoy the said hereby demised premises, with the appurtenances, for all the term hereby granted, without the lawful let, suit, trouble, denial, eviction, ejection, interruption, or disturbance whatsoever, of, from, or by the said _____, heirs or assigns, or of, from, or by any other person or persons lawfully claiming or to claim the said hereby demised premises, or any part or parcel thereof.

In Witness Whereof, I, the said (*name of lessor*), have hereunto subscribed my name and affixed my seal, at _____ on the _____ day of _____ in the year of our Lord _____

(*Name of grantor.*) (Seal.)

Executed and Delivered in the Presence of

CHAPTER XXXIII.

MORTGAGES AND PLEDGES OF GOODS AND CHATTELS, OR PERSONAL PROPERTY.

MORTGAGES are now often made of personal property. Any instrument will answer the purpose, which would suffice as a bill of sale of the property, and which contains, in addition to the words of sale and transfer, a clause providing for the avoidance of it when the debt is paid. I append to this chapter forms for this purpose. When the mortgagor of personal property retained possession, it was formerly doubtful what security the mortgagee had. Now, however, it is generally provided by statute, that the mortgagor may retain possession, if the mortgage be recorded.

These instruments should always be recorded according to the provisions of the statute of the State in which they are made; although the general rule would apply to them, that they would operate without record as to all parties having notice or knowledge of them. The statutes respecting mortgages of personal property always provide for an equity of redemption, which is usually very much shorter than that of land. A frequent period is sixty days. The requirements of the statute in respect to notice, foreclosure, etc., must be strictly followed. It used to be thought that a personal mortgage might be made to cover property subsequently acquired by the mortgagor. Thus, a dealer in dry goods would mortgage all his stock to secure some

creditor, and provide in the mortgage that it should operate upon all goods subsequently acquired by him. But it is now generally held that such a clause has no effect; because no man can make a mortgage of property which he does not own at the time. Such mortgages are, however, valid as between the parties, and have been authorized by statute in Georgia and North Dakota, and in Connecticut mortgages of machinery, engines, type, plates, etc., by manufacturing, printing, publishing or engraving establishments may include after acquired or substituted property used in such establishments. We give annexed to this chapter the laws of all the States relating to mortgages of personal property.

THE PLEDGE OF PERSONAL PROPERTY.

A PLEDGEE is bound to take ordinary (not extreme) care of the thing pledged; and, if it be lost or injured for want of such care, he is answerable. He cannot use it, except at his own peril; that is, he is liable for any injury caused by using it, even if it was not his fault. If the thing—as a horse—needs use for its own safety, then the pledgee may use it for this purpose, and is liable only for an injury caused by his negligence. He must account with the pledgor for the income, increase, or profits.

One difference between a mortgagee and a pledgee is this: A mortgagee need not take possession, for the mortgagor may retain it, and now this is provided for, as we have seen, by recording the mortgage. But if a thing is given in pledge, the pledgee must have and keep possession of it.

The most important difference is this. A mortgagee may sell and transfer his mortgage, and his transferee may transfer it again, and so on; and when the debt is paid, the mortgagor reclaims it from whomsoever has it then. But if a pledgee sells the pledge before the debt is due, it is held that he is at once answerable to the pledgor for its full value, although the debt be not paid.

Some cases of this kind have been carried very far in New York. It is held there,—and on grounds which may perhaps suffice to make it law everywhere,—that if A lends money to B, and takes stocks in pledge, A cannot sell these stocks and keep the proceeds, and replace the stock and return it when the debt is paid. He can do nothing but keep the stock; and if he sells it, the pledgor may recover at once its full value, and the pledgee will have no security for his debt. In such a case, a pledgee, be-

ing sued, offered the testimony of brokers and others to prove a uniform and established usage in the city of New York thus to sell or use pledged stock until the debt was paid; but the court said the usage was illegal, and refused to receive the evidence. But a contract specifically permitting such sale or use by the pledgee has been sustained in Massachusetts, and a clause to this effect is now frequently inserted in collateral notes.

It is certain that after the debt is due and payable, and after demand if it be payable on demand, the pledgee may have a decree in chancery for a sale of the pledge, or may sell it himself: *provided* he first gives a reasonable notice to the pledgor, and then sells it, after a reasonable delay, in a proper manner, by a public sale at auction; and uses all reasonable precautions to get its value, as by advertisement, etc.; and does not buy it himself, directly or indirectly; and conducts himself in all respects honestly; and then he must account for the proceeds.

Usually the parties agree, when the pledge is given, or afterwards, how the pledge shall be treated, or how sold if not redeemed, etc.; and such agreements, if fair and reasonable, are undoubtedly binding on both parties.

It is agreed that negotiable paper is excepted from the common rule; and the pledgee of that may sell or discount it before the debt is due; and must account for it, or its proceeds, if the debt is paid and the paper redeemed, or for the balance if he applies it to payment of the debt.

A *loan* of stock is not like a *pledge* of stock, because it authorizes the borrower to sell or pledge it, or use it in any way, at any time; but he must replace and return the same quantity of the same stock, when it is called for. If he could not thus make use of the stock, the loan of it would be of no benefit whatever to the borrower. But he cannot thus use stock pledged to him, unless by a special agreement which permits this use.

A pledgee, who receives a pledge to secure one or more specific debts, cannot retain it to secure other and further debts of the pledgor, unless with his consent. This consent may be express, or implied from words or circumstances which show that such was the understanding of the parties.

(320.)

A Mortgage of Personal Property.

Know all Men by these Presents, That I (*name of mortgagor*) of the town of _____, County of _____, and State of _____, for and in consideration of _____ dollars, to me in hand paid by (*name of mortgagee*) of the town of _____, County of _____, and State aforesaid, do sell and convey to the said (*name of mortgagee*) the following goods and chattels, to wit (*list or schedule of the articles, specifying them with sufficient distinctness to make it certain what they are*) warranted free of incumbrance, and against any adverse claims: Upon condition, that if the said (*name of the mortgagor*) pay to the said (*name of the mortgagee*) _____ dollars and interest, in _____ year, agreeably to a promissory note of this date, for that sum, payable to the said (*name of mortgagee*) or order, with interest, this deed shall be void, otherwise in full force and effect.

The aforesaid Parties Agree, That, until the condition of this instrument is broken, the said property may remain in possession of the said (*name of mortgagor*), but after condition broken the said (*name of mortgagee*) may at his pleasure take and remove the same, and may enter into any building or premises of the said (*name of the mortgagor*) for that purpose.

Witness our hands and seals this _____ day of _____, A. D. _____

(*Signature of mortgagor.*) (Seal.)

(*Signature of mortgagee.*) (Seal.)

Scaled and Delivered in the Presence of

COUNTY OF _____ }
STATE OF _____ } ss.

Be it Remembered, That on this _____ day of _____, nineteen hundred and _____, before me, the undersigned, Notary Public in and for said County and State, duly commissioned and qualified, came _____, who is known to me to be the same person whose name is subscribed to the foregoing instrument of writing, as party thereto, and he acknowledged the same to be his act and deed, for the purpose therein mentioned.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, at office, in the city of _____ the day and year last aforesaid.

Notary Public.

(321.)

A Mortgage of Personal Property, with Warranty.

Know all Men by these Presents, That I, (*name and residence of mortgagor*) in consideration of the sum of _____ to me in hand paid by (*name and residence of mortgagee*) the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said (*name of mortgagee*) the following articles of personal property; that is to say (*list or schedule*).

To Have and to Hold all and singular, the said goods and chattels, unto the said (*name of the mortgagee*) and his executors, administrators, and as-

signs, to his and their use forever. And I the said mortgagor, for myself and for my executors and administrators, do covenant to and with the said mortgagee, and with his executors, administrators, and assigns, that I am lawfully possessed of the said goods and chattels, as of my own property; that the same are free from all incumbrances, and that I will, and my executors and administrators shall, warrant and defend the same to the said mortgagee, his executors, administrators, and assigns, against the lawful claims and demands of all persons.

Provided Nevertheless, That if the said mortgagor, his executors or administrators, shall well and truly pay unto the said mortgagee, his executors, administrators, or assigns, the sum of _____ dollars, in _____ months from the date hereof (*or on a certain day, stating the day when the money is to be paid*) with interest at _____ per cent., then this deed as also a certain promissory note bearing even date herewith, signed by the said mortgagor, whereby he promises to pay the said mortgagee the said sum and interest at the time aforesaid, shall both be void; otherwise shall remain in full force and virtue.

And Provided Also, That until default by the said mortgagor, or his executors and administrators, in the performance of the condition aforesaid, or of some part thereof, it shall and may be lawful for him or them to keep possession of the said granted property, and to use and enjoy the same; but in case of such default, or if the same or any part thereof shall be attached, at any time before payment as aforesaid, by any other creditor or creditors of the said mortgagor, or if the said mortgagor, or his executors or administrators, shall attempt to sell the same, or any part thereof, without notice to the said mortgagee, or his executors, administrators, or assigns, and without his or their assent to such sale in writing expressed, or shall remove the same, or any part thereof, from the place in which they now are, without such notice and assent, then it shall be lawful for the said mortgagee, or his executors, administrators, or assigns, to take immediate possession of the whole of said granted property, to his and their own use.

In Testimony Whereof, I have hereunto set my hand and seal this _____ day of _____, in the year of our Lord one thousand nine hundred and _____

(Signature.) (Seal.)

Executed and Delivered in the Presence of

(322.)

A Mortgage of Personal Property, with a Power of Sale.

Know all Men by these Presents, That I, (*name of mortgagor*) of the town (*or city*) of _____, in the County of _____, and State of _____, in consideration of _____ dollars, to me paid by (*name of mortgagee*) of the town (*or city*) of _____, in the County of _____, and State of _____, the receipt whereof is hereby acknowledged, do hereby grant, bargain, and sell unto the said (*name of mortgagee*) and his assigns, forever, the following goods and chattels, to wit (*list or schedule*).

To Have and to Hold, All and singular the said goods and chattels unto the mortgagee herein, and his assigns, to their sole use and behoof forever. And the mortgagor herein, for himself and for his heirs, executors, and administrators, does hereby covenant to and with the said mortgagee and his assigns, that said mortgagor is lawfully possessed of the said goods and chattels, as of his own property; that the same are free from all incumbrances, and that he will warrant and defend the same to him the said mortgagee and his assigns, against the lawful claims and demands of all persons.

Provided, Nevertheless, That if the said mortgagor shall pay to the mortgagee, on the _____ day of _____, in the year _____, the sum of _____ dollars, then this mortgage is to be void, otherwise to remain in full force and effect.

And Provided Further, That until default be made by the said mortgagor in the performance of the condition aforesaid, it shall and may be lawful for him to retain the possession of the said goods and chattels, and to use and enjoy the same; but if the same or any part thereof shall be attached or claimed by any other person or persons at any time before payment, or the said mortgagor, or any person or persons whatever, upon any pretence, shall attempt to carry off, conceal, make way with, sell, or in any manner dispose of the same or any part thereof, without the authority and permission of the said mortgagee or his executors, administrators, or assigns, in writing expressed, then it shall and may be lawful for the said mortgagee, with or without assistance, or his agent or attorney, or his executors, administrators, or assigns, to take possession of said goods and chattels, by entering upon any premises wherever the same may be, whether in this county or State, or elsewhere, to and for the use of said mortgagee or his assigns. And if the moneys hereby secured, or the matters to be done or performed, as above specified, are not duly paid, done or performed at the time and according to the conditions above set forth, then the said mortgagee, or his attorney or agent, or his executors, administrators, or assigns, may by virtue hereof, and without any suit or process, immediately enter and take possession of said goods and chattels, and sell and dispose of the same at public or private sale, and after satisfying the amount due, and all expenses, the surplus, if any remain, shall be paid over to said mortgagor or his assigns. The exhibition of this mortgage shall be sufficient proof that any person claiming to act for the mortgagee is duly made, constituted, and appointed agent and attorney to do whatever is above authorized.

In Witness Whereof, The said mortgagor has hereunto set his hand and seal this _____ day of _____ in the year of our Lord one thousand nine hundred and _____.

(Signature of mortgagor.) (Seal.)

Signed, Sealed, and Delivered in the Presence of

(323.)

Mortgage of Personal Property, with Power of Sale—Another Form.

Know all Men by these Presents, That I, (name and residence of mortgagor) in consideration of the sum of _____ to me paid by (name and

residence of mortgagee) the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said (*name of mortgagee*) the following named and described articles of personal property; that is to say (*here follows the list or schedule and description of the articles mortgaged*).

To Have and to Hold, All and singular, the said goods and chattels, unto the said (*name of mortgagee*) and his executors, administrators, and assigns, to his and their sole use forever. And I, the said mortgagor, for myself and my executors and administrators, do covenant to and with the said mortgagee and his executors, administrators, and assigns, that I am lawfully possessed of the said goods and chattels, as of my own property: that the same are free from all incumbrances; and that I will, and my executors and administrators shall, warrant and defend the same to the said mortgagee and his executors, administrators, and assigns, against the lawful claims and demands of all persons.

Provided, Nevertheless, That if the said mortgagor, or his executors or administrators, shall well and truly pay unto the said mortgagee, or his executors, administrators, or assigns, the sum of _____ in _____ months from the date hereof, together with interest on the same at the rate of _____ per cent. per annum, then this deed, as also a certain promissory note bearing even date herewith, signed by the said mortgagor, whereby he promises to pay the said mortgagee the said sum and interest at the time aforesaid, shall both be void, and otherwise they shall remain in full force and virtue.

And Provided Also, That until default by the said mortgagor or his executors and administrators, in the performance of the condition aforesaid, or of some part thereof, it shall and may be lawful for him or them to keep possession of the said granted property, and to use and enjoy the same; but in case of such default, or if the same or any part thereof shall be attached at any time before payment as aforesaid, by any other creditor or creditors of the said mortgagor, or if the said mortgagor, his executors or administrators, shall attempt to sell the same or any part thereof without notice to the said mortgagee or his executors, administrators, or assigns, and without his or their assent to such sale in writing expressed; or shall remove the same, or any part thereof, from the place where they now are, without such notice and assent, then it shall be lawful for the said mortgagee, his executors, administrators, or assigns, to take immediate possession of the whole of said granted property to his or their own use, and to sell at public auction and dispose of the whole, or of so much of said granted property, as shall produce a sum of money sufficient to pay and discharge the above-mentioned debt or liability, with interest, and all costs and charges of keeping and selling the same, and all just and equitable liens then existing thereon, without further notice or demand, except giving _____ days' notice of the time and place of said sale to said mortgagor or his legal representatives; and after the said debt or liability, with interest, costs, charges, and liens, shall be so discharged and satisfied, the surplus of the money arising from said sale and the residue of said granted property, shall be paid and

restored to said mortgagor or his legal representatives, discharged from all claim under this mortgage.

In Testimony Whereof, I, _____, the said (*name of mortgagor*) have hereunto set my hand and seal this _____ day of _____ in the year of our Lord one thousand nine hundred and _____

(*Signature.*) (*Seal.*)

Executed and Delivered in Presence of

ABSTRACT OF THE LAWS OF THE STATES AND TERRITORIES CONCERNING CHATTEL MORTGAGES.

Alabama.—Personal property may be mortgaged, but to be good against creditors and purchasers without notice, the mortgage must be recorded in the county where the grantor lives, and also in the county where the property is at the time of conveyance. If removed to another county, the mortgage must be recorded there within three months. Mortgages of personal property usually contain powers of sale, and are foreclosed according to the provisions of the mortgage.

Alaska.—Any transferable interest may be mortgaged, but to be valid against creditors possession must be delivered to and retained by the mortgagee, or an affidavit filed as to good faith. The mortgage must be acknowledged, and filed in the office of the recorder of the precinct where the mortgagor is, and in that where the property is. Within thirty days next preceding the expiration of one year from the original filing, it must be renewed, which has the effect of extending the lien one year. Chattel mortgages are foreclosed in the same manner as mortgages on real property. If the mortgagor sells the property during the existence of the lien without notifying the purchaser of the existence thereof, he forfeits twice the value of the property sold.

Arizona.—All personal property may be mortgaged. The mortgage must set forth the residences of the mortgagor and mortgagee, the sum to be secured, the rate of interest to be paid, and when and where payable, and both parties must make affidavit that the mortgage is *bona fide*, and not made to defraud or delay creditors. The mortgage, with the affidavit annexed, must be recorded in the county where the mortgagor lives, and also where the property is situated when there is not immediate delivery and continued change of possession. Foreclosure by notice and sale. Notice must be served on mortgagor, subsequent purchasers and persons having recorded liens, posted in three public places in the county ten days before the sale, and published once in a newspaper in the county.

Arkansas.—Chattel mortgages must be acknowledged before some person authorized by law to take acknowledgments, and filed or recorded in the county where the mortgagor resides, and are liens on the property mortgaged only from such time. If filed without being recorded, the lien expires in one year, unless within thirty days before the expiration of the year the mortgagor files an affidavit showing his interest in the mortgaged property and the amount due. After condition broken, suit may be brought on the

mortgage, and judgment rendered for the sale of the property and the recovery of the debt against the defendant personally. If the property does not bring two-thirds of the appraised value, the sale may be postponed for sixty days, unless the right of appraisal is expressly waived in the mortgage.

California.—The following property may be mortgaged: Locomotives and rolling stock of a railroad company, steamboat machinery, and machinery used by machinists, foundrymen, and mechanics, vessels of more than five tons burden, pianos and organs, steam engines and boilers, mining machinery, printing presses and materials, professional libraries, instruments of surgeons, physicians, surveyors, and dentists, and the instruments, negatives, and fixtures of photograph galleries, upholstery and furniture and household goods, oil paintings, pictures, and works of art, growing crops, wine, fruit brandy, fruit syrup, or sugar and apparatus used in the manufacture or storage of the same; iron and steel safes, cattle, horses, mules, swine, and sheep, harvesters' threshing outfits, hay presses, and farming implements; abstract systems, books and papers of searchers of records, raisins and dried fruits cured or in process, boxes, fruit graders, drying trays, and fruit ladder. The mortgage is void against creditors, unless accompanied by an affidavit of all the parties that it is made in good faith and without any design to defraud creditors, and unless it is acknowledged and recorded in the same manner as a deed of real property in the office of the recorder for the county where the mortgagor resides, and also where the property is situated. Chattel mortgages may be foreclosed, as in the case of pledges by sale after demand; the mortgagee must give notice of the time and place of sale which must be by public auction; or he may foreclose by action, and the court by its judgment may direct a sale of the property.

Colorado.—The property must be delivered to the mortgagee, or the mortgage acknowledged and filed or recorded in the county or counties where the property is, and it is then valid for two years if the mortgage debt does not exceed \$2,500, for five years if the debt does not exceed \$20,000, and ten years for larger sums. If the amount exceeds \$2,500 mortgagee must annually file a sworn statement that the mortgage was given in good faith to secure the sum mentioned therein, and the amount due. Mortgage may within thirty days after maturity of original or extension be extended for two years by filing sworn statement showing amount of payments made and amount unpaid, and that it is still due. When chattel mortgages are in form of trust deeds, they contain a power of sale by the trustee at public auction, on giving certain notice. Otherwise there is no statute provision in regard to foreclosure. After default the mortgagee has thirty days to take possession of the property, and until possession is taken mortgagor has right to redeem. Mortgage on household goods must be executed jointly by husband and wife.

Connecticut.—Machinery, engines, or implements situated or used in any manufacturing or mechanical establishment, presses, types, etc., pertaining to a printing establishment, household furniture used in housekeeping, hay in a building, tobacco in the leaf, pianos, organs, and melodeons, and any instrument used by a band or orchestra, and brick, burned or unburned, in any kiln or brickyard may be mortgaged. The mortgage must be executed, ac-

known, and recorded in all respects as a deed of land, and, on breach of condition, may be foreclosed by order of court.

Delaware.—Chattel mortgages must be acknowledged and recorded within ten days, and the lien continues for five years. They must be renewed every five years. Mortgages are foreclosed by suit in court.

District of Columbia.—Security on chattels is usually taken by deeds of trust, which must be acknowledged and recorded, and which usually confer on the trustee power to sell in case of default after giving notice by advertisement.

Florida.—The property mortgaged must be delivered to the mortgagee, or the deed must be executed and acknowledged in the same manner as deeds of real property (see Deeds, etc.), and recorded within ninety days in the office of records for the county where the property is at the time of the execution of the mortgage. The mortgage is foreclosed by bill in equity in the circuit court for the county where the property is, except mortgages for less than one hundred dollars, which may be foreclosed in a justice's court. When a mortgage is paid in full, it must be canceled on the records by the mortgagee, and failure to do so for thirty days after written demand is punishable by fine or imprisonment or both.

Georgia.—The mortgage must clearly indicate the creation of the lien, specify the debt and the property to be secured. It must be executed in presence of, and attested or proved by or before, a notary public or a judge or clerk of court, and recorded in the county where the mortgagor resides, and in the county where the property is, and is valid against third parties only from date of record. To foreclose, the mortgagee must go before some officer of the state authorized to administer oaths (or a commissioner for Georgia, if he be a non-resident), and make an affidavit of the amount due, and that the mortgagor, if a resident of the State, resides in the county where the foreclosure is made, which affidavit shall be affixed to the mortgage, and the mortgage filed in the office of the clerk of the superior court for the county where the mortgagor resides; and the clerk shall thereupon issue an execution directing the sale of the property. The sheriff shall levy on the property, and after advertising weekly for four weeks, may sell the same. When the debt is not over one hundred dollars, the proceedings may be before a justice of the peace, who may issue execution after notice to the mortgagor, and the constable may sell after advertising sale in three or more public places in his district.

Hawaii.—All chattel mortgages not accompanied by immediate and continued possession must be acknowledged and recorded in the same manner as conveyances of real estate.

Idaho.—Mortgages of personal property must state the residence of the mortgagor and mortgagee, the sum to be secured, rate of interest, and when and where payable, and the mortgagor must acknowledge the instrument and make affidavit that the mortgage is *bona fide*, and made without design to defraud or delay creditors. The mortgage and affidavit attached must be recorded in the county where the property is situated. Foreclosure may be by action, or the mortgaged property may be sold at sheriff's sale.

Illinois.—Mortgages of personal property are not valid unless the property is delivered to the mortgagee, or the instrument is acknowledged before a proper officer, and recorded in the county where mortgagor resides, or if he is a non-resident, in the county where the property is. The lien expires in three years from the date of record unless within thirty days before the expiration of three years, or the maturity of the debt, the parties file with the recorder and with the justice upon whose docket the acknowledgment was recorded, or his successor, an affidavit setting forth the interest of the mortgagee in the property, the amount unpaid and when due, by which the lien is extended for one year longer from the filing thereof, or until the maturity of the debt, not to exceed one year. After default, the mortgage must be at once foreclosed, or the lien will be lost. Chattel mortgages usually contain a power of sale and may be foreclosed in accordance therewith, except mortgages on necessary household goods, wearing apparel, or mechanics' tools, which can be foreclosed only in a court of record. A mortgage by a married man or woman on household goods must be joined in by wife or husband. Notes secured by chattel mortgage must so state.

Indiana.—If the goods are not delivered, the mortgage must be acknowledged in the same manner as deeds of real property, and recorded within ten days in the county where the mortgagor lives, or if he be a non-resident in the county where the property is. There is no strict foreclosure. The mortgagee is entitled to possession of the property on breach of the condition, and may bring an action to recover the same, but the equity of redemption of the mortgagor can be extinguished only by public sale after proper notice, or by sale on foreclosure proceedings. Mortgage of household goods must be foreclosed by suit.

Iowa.—Mortgage must be executed and acknowledged like conveyance of real estate, and recorded or filed in county where property is situated, or, if mortgagor be a resident of the State, in the county where the holder of the property resides. Mortgages for the payment of money only, and in which the time of payment is fixed, may be foreclosed by notice and sale. Notice must contain a full description of the property, and the time, place, and terms of sale, and served on the mortgagor and purchasers from him, and on all persons having recorded liens subsequent to the mortgagor, and published in the same manner as in case of sale of property on execution. Mortgage of property exempt from execution must be signed by both husband and wife.

Kansas.—Unless the property be delivered to the mortgagee, the mortgage, or a copy of it, must be deposited in the office of the register of deeds for the county where the mortgagor resides, or where the property is if he is a non-resident, and, in order to preserve the lien, an affidavit must be filed within thirty days of the expiration of each two years by the mortgagee, stating that his interest is a continuing one, and the amount then due. After condition broken, the mortgagee or his assignee may proceed to sell the mortgaged property, or so much thereof as is necessary to satisfy the mortgage, having first given notice of the time and place of the sale by written or printed handbills posted in at least four different places in the township or city in which the property is to be sold, at least ten days before the sale,

or if the mortgage so provides he may sell at private sale. Mortgage of exempt property must be signed by husband and wife jointly. Promissory notes and other written instruments evidencing conditional sale of personal property retaining title in vendor until price is paid in full are subject to the same provisions as to record, etc., as chattel mortgages.

Kentucky.—Chattel mortgages must be acknowledged, and recorded in the office of the clerk of the court for the county where the mortgagor resides. They may be foreclosed by bill in equity. If the mortgagee takes possession for foreclosure, the mortgagor has five years to redeem.

Louisiana.—The following property may be mortgaged: lumber, logs, staves, cross-ties, bricks and live stock, all kinds of vehicles, and equipments, accessories and parts thereunto belonging, all kinds of machinery, oil well casings, line pipes, drilling rigs, tanks, tank cars, iron and steel safes, adding machines, cash registers, musical instruments, store fixtures and shelving, buildings on leased ground, farming implements, tractors, ships, barges, dry docks or any kinds of water craft or materials to be used in the construction thereof, and all other movable property not specifically named. Mortgage must be in writing, contain a full description of the property, and the time of maturity, and be signed by both parties or their lawful agents or attorneys. To affect third parties without notice it must be passed by notarial act, and deposited forthwith in the office of the Recorder of Mortgages of the parish where the property is then situated, and of the parish where the mortgagor resides. Property must not be removed from the parish without written consent of mortgagee, and, if removed, copy of mortgage must be recorded in parish to which removal is permitted.

Maine.—Mortgages of personal property are invalid as to third persons unless property is delivered to mortgagee within ten days after date, or, if undated, within ten days after execution and delivery, and retained by him; or mortgage is recorded within said ten days in the office of the clerk of the city, town or plantation where mortgagor resides. When all mortgagors reside out of the State, mortgage must be recorded in registry of deeds of registry district where property is when mortgage is made; but if part of mortgagors reside in the State, then where such mortgagors reside. If any mortgagor resides in unorganized place, record must be in registry of registry district where such place is located. Mortgage by corporation recorded where it has its established place of business, or, if none in the State, or in unorganized place, then in registry district where property is located. Such mortgages need not be acknowledged. After condition broken, the mortgagee or his assignee may give the mortgagor written notice of his intention to foreclose, by leaving a copy thereof with the mortgagor, or if he is absent from the State, by leaving such copy at his last and usual place of abode, or by publishing a copy once a week, for three successive weeks, in one of the principal papers of the town where the mortgage is recorded. The notice, with an affidavit of service, or copy of the publication, must be recorded where the mortgage is recorded, and all right of redemption is forfeited in sixty days after such notice is recorded. If the mortgagee is a non-resident, he must record with such notice his appointment of an agent in the same town, to whom tender or payment may be made.

Maryland.—Mortgages and bills of sale must contain the names of the parties, the consideration, and a description of the property mortgaged, and an affidavit by the mortgagee that the consideration named is true and *bona fide* as set forth; they must be signed, sealed, dated, and acknowledged, and recorded, in the county or city where the vendor resides within twenty days after the date of the mortgage. The mortgage may be foreclosed by sale under the supervision of a court of equity.

Massachusetts.—Chattel mortgages need not be under seal nor acknowledged. They must be recorded within fifteen days after date on the records of the city or town where the mortgagor resides, and also in the city or town in which he principally transacts his business. If a non-resident, the mortgage must be recorded in the city or town where the property is. If it requires to be twice recorded, the second record will be good if made within ten days after the first. A record not made within the time specified is of no effect. The same provisions apply to bills of sale given as security. If the condition for redemption be in writing it must be recorded with the bill of sale; if oral, a written statement of such condition signed by the mortgagee must be recorded. The mortgagee or his assigns, after condition broken, may give to the mortgagor written notice of his intention to foreclose the same, which notice shall be served by leaving a copy with the mortgagor, or person in possession of the property claiming the same, or by publishing it at least once a week, for three successive weeks, in one of the principal newspapers published in the town or city where the mortgage is properly recorded, or where the property is situated. The notice, with an affidavit of service, shall be recorded wherever the mortgage is recorded. Unless the mortgagor tenders payment of the amount due within sixty days after such record the right to redeem will be foreclosed. If the mortgage contain a power of sale, the property may be sold in accordance with its terms.

Michigan.—If not accompanied by delivery of the property mortgaged, the mortgage or a copy thereof must be recorded in the office of the clerk of the city or town where the property is situated and also of the city or town where the mortgagor resides, or, if he be a non-resident, where the property is, together with an affidavit that consideration was actual and adequate, and, within thirty days before the expiration of each year, the mortgagees must file an affidavit setting forth his interest in the property. Mortgage by railroad, electricity, gas, telephone or telegraph corporation must be recorded in registry of deeds of each county through which lines or property pass, and requires no renewal. Mortgage on stock of merchandise purchased for resale at retail, with affidavit, must also be filed in registry of deeds of country where property is. There are no statute provisions in regard to foreclosure. Each mortgage should contain provisions as to its own foreclosure, which will be carried into effect. In the absence of such provisions, foreclosure will be by proceedings in chancery. A mortgage may be made to cover goods purchased to replace the stock originally mortgaged.

Minnesota.—The mortgage must be made in good faith and not for the purpose of hindering, delaying, or defrauding creditors. It must be attested by two witnesses, acknowledged and recorded in the registry of

deeds of the county where the mortgagor resides, or if a non-resident, where the property is situated, or if such place be a city of the first class then with the city clerk, otherwise the mortgagee must have immediate possession and maintain such possession until the debt is paid. The lien continues for six years from the date of filing, or, if debt is not then due, for two years after maturity. Mortgage of exempt property must be executed by both husband and wife. Foreclosure must be by public sale in the county where the property is or the mortgage filed. Notice of sale containing names of mortgagor, mortgagee, and assignee, if any, date of mortgage, nature of default and amount due, description of the property, time and place of sale and name of person foreclosing, must be served upon person in possession of the property and mortgagor, if in the county, and posted in three public places in the county at least ten days before the sale. Person foreclosing must within three days after sale file in the office where the mortgage is filed a report, under oath, of foreclosure proceedings, specifying property sold, amount received, amount of costs and expenses and of the disposition of proceeds and amount applied on mortgage debt. Property sold may be redeemed within two days after sale.

Mississippi.—Mortgages of personal property must be acknowledged, and recorded in the office of the clerk of the court of chancery for the county where the property is, and are notice to third parties from the date of record. The mortgage should contain provisions as to foreclosure, sale, etc., and may be foreclosed in accordance with the terms expressed in the same.

Missouri.—Mortgages are usually in form of deed of trust with power of sale. Unless the property is delivered, the mortgage must be acknowledged or proved and recorded in the county where the mortgagor resides, or, if he be a non-resident, where the property is. Mortgages with power of sale may be foreclosed in accordance with such power, and such sale bars the right of redemption. All mortgages in which the debt, exclusive of interest does not exceed one hundred dollars, may be foreclosed by sale of the property by the mortgagee, he first giving sixty days' notice after default that the property will be sold, and thirty days' notice of the time and place of sale. All other mortgages may be foreclosed by petition to the circuit court. There can be no foreclosure if note is barred by limitation.

Montana.—A chattel mortgage must be accompanied by an affidavit of mortgagee that it is made in good faith to secure the amount named therein, and without design to hinder or delay creditors, and must be acknowledged and filed, with mortgagor's written receipt for copy of mortgage annexed, in the office of the county clerk of the county where the property is situated, and is good for two years and sixty days from the date of filing, but within sixty days after expiration of said two years may be renewed for three years by filing an affidavit showing date of mortgage, names of mortgagor and mortgagee, date of filing, amount of debt secured and amount then due, and that mortgage was not made or renewed to hinder, delay, or defraud creditors or subsequent mortgagees. Mortgage may cover growing crops or crops to be sown, and lien continues after severance from the soil. Foreclosure is the same as in the case of mortgages of real property, but the mortgage may contain a clause authorizing the sheriff to sell the prop-

erty on default, in which case he may sell in the manner specified in the mortgage.

Nebraska.—The property must be delivered, or else the mortgage, or a copy, filed in the office of the county clerk of the county where the mortgagor resides, or, if he be a non-resident, where the property is situated, and ceases to be valid as against creditors, etc., after five years from date of filing. A mortgage with power of sale may be foreclosed by giving at least twenty days' notice of the time and place of sale. The notice shall specify the mortgage, parties, the amount due, and description of the property, and time and place of sale, and shall be published in some newspaper in the county where the property is, or, if no newspaper is published in said county, then by posting up notice in at least five public places in the county, two of which shall be in precinct where sale is to take place. The sale shall be by public auction. If the mortgage contains no power of sale, it may be foreclosed by action. Mortgage of household goods must be signed and acknowledged by both husband and wife.

Nevada.—Chattel mortgages are allowed for sums not less than one hundred dollars. Unless property is delivered to mortgagee, the mortgage must be recorded in the office of the recorder of county where the mortgagor resides and also where property is situated and be accompanied by affidavit of both parties that mortgage is made in good faith for debt actually owned by mortgagor, the amount and character of debt, and that same is not made to hinder, delay, or defraud creditors. Foreclosure is by action and decree for sale of property.

New Hampshire.—Possession must be delivered to and retained by the mortgagee, or the mortgage recorded with the clerk of the town where the mortgagor resides, or if the mortgagor resides out of the State, in the town where the property is situated. Both parties must make affidavit that the mortgage is made in good faith, and to secure an existing debt. The mortgagee, at any time after thirty days from the time the condition is broken, may sell the mortgaged property at auction, notice of the time, place, and purposes of the sale being posted at two or more public places in the town in which the sale is to be, at least four days prior thereto. The mortgagee shall notify the mortgagor at least four days prior to the sale. He may purchase at such sale, and the mortgagor may redeem at any time before the sale.

New Jersey.—Unless accompanied by delivery of the property, the mortgage must be acknowledged and it or a copy thereof, together with an affidavit of the holder of the mortgage, stating the consideration, and, as nearly as possible, the amount due or to become due thereon, must be filed in the clerk's office for the county where the mortgagor resides, or, if he is a non-resident, in the county where the property is. If there is a registry of deeds in the county, the mortgage must be filed in such registry. After acquired property may be included in the mortgage. Foreclosure is usually enforced by sale conducted in the same manner as sales of personal property taken under execution. Foreclosure may also be made by suit in equity. Five days' notice in writing, stating amount due, must be given before foreclosure of mortgage on household goods.

New Mexico.—All kinds of personal property, including growing crops may be mortgaged. Mortgage must be acknowledged in the same manner as a deed of real estate, and filed in office of county clerk where property is, or recorded like deed of real estate, and is good for six years from date of maturity. After condition is broken, the mortgagee may sell the property, or so much thereof as may be necessary, first giving notice of time and place of sale by hand bills posted in four public places in precinct where property is to be sold, ten days before sale.

New York.—The mortgage, or a true copy, must be filed in the office of the clerk of the city or town where the mortgagor resides, or, if a non-resident, where the property is, unless the office of the county clerk or register is in such city or town, in which case it must be filed therein; and every year, within thirty days before the expiration of the same, the mortgagee must file a copy of the mortgage and an affidavit showing his interest in the property, or a statement describing the mortgage, the date and place of record, and the interest of the mortgagee therein. The mortgagee may take possession of the property after condition is broken, and sell the same either at private sale or by public auction. It is customary to give three days' public notice if the sale is by auction, and the mortgagor may redeem at any time before the sale, but not after. If the mortgage contains terms or provisions as to foreclosure, sale, etc., the foreclosure will be governed by them. Mortgage on canal craft must be filed in comptroller's office and is valid as long as debt is enforceable.

North Carolina.—Mortgages and conditional sales are not valid unless recorded in the county where the mortgagor resides, or, if he is a non-resident, in the county where the property is. On breach of condition, if the mortgage contain a power of sale, the mortgagee may proceed to sell at auction, first giving twenty days' notice at the court-house door as well as in the manner prescribed by the mortgage itself; or the foreclosure may be made by suit in court. If household furniture be mortgaged mortgagor's wife must join.

North Dakota.—Unless the mortgagor's acknowledgment is taken, a chattel mortgage must be in writing subscribed by the mortgagor in the presence of two witnesses, who must sign as such, and be recorded in the office of the register of deeds of the county in which the property is situated, and is good for three years. Mortgagee must give mortgagor a copy, and receipt for same must be filed with mortgage. A proviso that the mortgage shall cover after acquired property is valid. It may be renewed within ninety days before expiration of three years from date by filing in the office of the register of deeds a copy of the mortgage with a statement of the balance then due, subscribed and sworn to by mortgagor or his agent or attorney. Foreclosure by action, or, if containing a power of sale, by public sale on six days' notice if published in a newspaper, or ten days if posted. By giving notice at sale mortgagor may redeem in five days.

Ohio.—If the property is not delivered, the mortgage is absolutely void, unless it, or a copy is deposited with the county recorder of the county where the mortgagor resides, or if he is not a resident, then of the county wherein the property is situated when the mortgage is executed, to be kept by him

for the inspection of all persons interested, or to be recorded. The mortgagee must file with the mortgage a statement, under oath, of his claim in dollars and cents, and that it is unpaid; and a copy of the mortgage and an affidavit showing mortgagee's present interest must be filed within thirty days before the expiration of every three years thereafter. There are no provisions in regard to foreclosure of chattel mortgages as distinguished from others. Any provisions in the mortgage would be carried into effect. The mortgagor is entitled to possession and use of the property. After acquired property must be reduced to possession by the mortgagee in order to be covered by the mortgage.

Oklahoma.—Mortgage must be signed by mortgagor in presence of two witnesses, and it or a true copy must be deposited in office of register of deeds of county where mortgagor lives or if a non-resident, in county where the property is, or it may be acknowledged and recorded. If merely filed it is good for only three years from date of filing, but may be extended by filing within thirty days before the expiration of the three years a copy of mortgage and affidavit of amount still due. Foreclosure may be by suit, or, under certain conditions by sale after ten days' notice.

Oregon.—Mortgages of personal property must be executed, acknowledged, and recorded in the same manner as conveyances of real estate (see Deeds). Every such mortgage is void against subsequent purchasers in good faith, unless there has been immediate delivery and a change of possession, or unless it has been duly recorded. After condition broken, the mortgagee is entitled to possession, and he may recover the same by suit. The mortgage may provide how it shall be foreclosed, in which case that method, and no other, shall be followed. In the absence of any other provision, foreclosure is by action, but where the consideration is less than five hundred dollars, the property may be sold by a sheriff or constable on the written request of the mortgagee.

Pennsylvania.—Leases of collieries, manufactories, mines, and other premises with the buildings and machinery, may be mortgaged, also iron ore, manufactured iron, boilers, engines, oil, gas, and artesian well supplies, petroleum, roofing and manufactured slate, asphaltum, and cement,—in these latter cases for sums not less than one hundred dollars,—provided the mortgage is recorded in the same manner as deeds of real estate. With these exceptions, no mortgages of personal property are authorized by statute. The mortgage must be made in form prescribed by statute, and properly acknowledged and recorded. Loans on personal security are mere pledges, and the lender must take possession of the property pledged.

Philippines.—All personal property is subject to mortgage. Unless possession is delivered to the mortgagee the mortgage must be recorded in the office of the register of deeds of the province in which the mortgagor resides or, if he is a non-resident, in the province where the property is situated. If the property is in a different province from that in which the mortgagor resides it must be recorded in both provinces. After condition is broken mortgagor may after thirty days cause property to be sold by public officer in the municipality where the mortgagor resides or where the property is situated, first giving ten days' notice of time, place, and purpose of sale.

Porto Rico.—Chattel mortgages are not in use in Porto Rico.

Rhode Island.—Unless the property is delivered to the mortgagee, the mortgage must be recorded within five days, in the office of the clerk of the town where the mortgagor resides, or where the property is, if he be a non-resident. The mortgagee may take possession after condition is broken. If there are any provisions for a sale in the instrument, the property may be sold in accordance therewith. Redemption at law may be had at any time within sixty days after breach, unless the property has been sold as above. The equity may be foreclosed by bill in equity.

South Carolina.—Property mortgaged must be described in writing or typewriting, not printing, on the face of the mortgage. The mortgage must be proved by affidavit of a subscribing witness and recorded within ten days in the office of the register of mesne conveyances if in the counties of Charleston, Greenville or Spartanburg, elsewhere with the clerk of court of the county where the mortgagor resides; or, if he be a non-resident, where the property is situated. Mortgages of stock in trade are valid and cover after acquired property substituted for goods sold. Recording after ten days is notice only as to subsequent creditors or purchasers. Foreclosure by sale after notice posted for fifteen days in three public places in the county where the property is, one of which shall be the court-house door, or after publication for two weeks in the county where the mortgagee resides, unless the mortgagor has otherwise agreed in writing.

South Dakota.—Mortgage must be in writing subscribed by the mortgagor in the presence of two witnesses, who must sign as such, and be filed in the office of the register of deeds of the county in which the property is situated. No acknowledgment is necessary. It must bear a certificate signed by the mortgagor that he has received from the mortgagee a true copy of the mortgage. It is good for three years from the date of filing, but may be extended within thirty days before the expiration of said three years by filing in the office of the register of deeds a copy of the mortgage with a sworn statement of the amount then due. Foreclosure may be by action, or on six days' notice by publication in a newspaper nearest the place of sale.

Tennessee.—Mortgages must be acknowledged or proved and registered in the county where the mortgagor resides, or, if he be a non-resident, where the property is situated. If the mortgage contain a power of sale, it may be foreclosed in accordance therewith; if not, it is foreclosed by bill in equity.

Texas.—A chattel mortgage must be filed in the office of the clerk of the county where the mortgagor resides, or, if a non-resident, where the property is situated. It is foreclosed by suit, and the property is sold under decree of the court. If the property is removed from the county without the mortgagee's consent, the latter is entitled to immediate possession and sale, whether the debt is due or not.

Utah.—A chattel mortgage must be accompanied by an affidavit of the parties that it is made in good faith to secure the sum named, and not intended to hinder or delay creditors, and be witnessed, and filed with the recorder in the county where the mortgagor resides, or, if he be a non-resident, where the property is situated. Within thirty days after the expiration

of three years from date of filing, and within thirty days after the expiration of each year thereafter an affidavit of the mortgagee, or his agent, showing his interest in the property and the amount due must be filed. No mortgage is valid for more than five years. If it contain a power of sale, it may be foreclosed by the sale of the property without legal proceedings, provided certain statutory provisions as to notice, etc., are complied with; otherwise the foreclosure will be by suit.

Vermont.—Mortgages of personal property must be recorded in the office of the clerk of the town where the mortgagor resides, or, if he be a non-resident, where the property is situated, and must be accompanied by an affidavit, subscribed by the mortgagor and mortgagee, that the mortgage is made for the purpose of securing the debt specified in the condition thereof, and for no other purpose whatever, and that the same is a just debt, honestly due, and owing to the mortgagee. At any time after thirty days from the time of condition broken, the mortgagee may cause the property to be sold at public auction by a public officer in the town where the mortgagor resides, or where the property is situated, provided notice of the time, place, and purpose of the sale has been posted in two or more public places in such town ten days previously, and ten days' notice in writing given to the mortgagor. Any surplus is paid to the mortgagor, or applied on subsequent mortgages, if there be any such. The officer must make return of his doings to be filed and recorded where the mortgage is recorded.

Virginia.—Chattel mortgages are executed, acknowledged, and recorded in the same manner as deeds of real estate (see Deeds). Chattel mortgages are usually given as deeds of trust, in which case they may be foreclosed by the trustee according to the terms of the mortgage, without the intervention of the courts.

Washington.—A mortgage of personal property must be accompanied by the affidavit of mortgagor that it is made in good faith, and without design to hinder, delay, or defraud creditors, and must be acknowledged and filed within ten days in the office of the county auditor of the county where the property is situated; if for three hundred dollars or more it may also be recorded in the same manner as a deed of real estate. It ceases to be notice unless within two years after it becomes due mortgagee files affidavit of amount due. The mortgagee may on default, or previously if he has reasonable ground to believe that the security is endangered, have the property taken and sold by the sheriff. Notice of the time and place of sale and amount due must be served on the mortgagor, and like notice must be given of the sale as of sales on execution. If the right to foreclose or amount due is disputed, the proceedings may be transferred to the district court, or the foreclosure may be made by suit in court in the first instance.

West Virginia.—Chattel mortgages require the same formalities as deeds of real estate, must be executed under seal or scroll, acknowledged, or else proved by two witnesses, and recorded in the county where the property is. Chattel mortgages are seldom used, and are foreclosed in court of equity after decree. Deeds of trust usually take their place, and, after default, the trustee may sell the property, after due notice, without recourse to the courts.

Wisconsin.—The mortgage, or a copy, is to be filed in the office of the clerk of the town, city, or village where the mortgagor resides, or if he is a non-resident, where the property is; and every two years, within thirty days before the expiration thereof, the mortgagee must file an affidavit showing his interest in the mortgaged property. After condition broken, the mortgagee may take possession of the property and at the expiration of five days sell the same, and any surplus over the debt and costs must be returned to the mortgagor. Mortgages of marked logs must be recorded in the office of the lumber inspector of the district where the marks are recorded. Mortgages of exempt property or household furniture must be signed by the mortgagor's wife in the presence of two witnesses.

Wyoming.—A chattel mortgage must be executed and acknowledged like conveyances of real estate, and filed in the clerk's office of the county where the property is situated. It is then valid for six months after the expiration of the term for which it was given, but may at or before the expiration of the six months be renewed for another year by filing an affidavit setting forth the mortgagee's interest in the mortgage, and may be further renewed annually in the same manner. It is foreclosed by sale at public auction, after three weeks' advertisement of the time and place of such sale. Chattel mortgages may be made to secure future advances.

CHAPTER XXXIV.

THE LAW OF PATENTS, INCLUDING DESIGNS, TRADE-MARKS, PRINTS AND LABELS.

WHO MAY OBTAIN A PATENT.

Section 4,886 of the Revised Statutes of the United States provides that "any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof, not known or used by others in this country before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, or more than two years prior to his application, and not in public use or on sale in this country for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceeding had, obtain a patent therefor."

In case of the death of the inventor, his legal representatives will be entitled to apply for and receive the patent.

Joint inventors are entitled to a joint patent, but neither can claim one separately.

An alien may obtain a patent on the same terms as a citizen.

Merely conceiving the idea of a machine or improvement is not such an "invention" or "discovery" as will prevent a subsequent inventor from obtaining a patent. In order to have this effect, the alleged prior invention must have been reduced to a practical form, capable of actual use; and, in most cases, actual use itself is also held to be necessary.

Nor will the fact of prior use or invention abroad prevent the issue of the patent, unless the invention has been patented or described in some printed publication.

As between two rival inventors, however, the rule is that he who first conceives the idea of an invention, and uses reasonable diligence in reducing it to practice, is the prior inventor as against one whose conception of the idea was later, though he was the first to reduce it to practice. In such case, drawings, models, or even oral descriptions may be used for the purpose of proving the date of the conception of the invention.

When two or more persons apply for patents for the same invention an "interference" is declared between them. Each party is required to file a statement under oath, of the date and circumstances of his alleged invention, testimony is taken in support of their respective claims, and a trial is then had before an examiner in the Patent Office to determine which was the first inventor. An interference may be declared even though one of the parties has already obtained a patent.

The inventor may employ mechanics to embody his ideas, and may avail himself of their suggestions as to form and details, if the plan of the invention be his own.

An inventor may abandon his invention. By "abandonment" is meant a public use of it with the knowledge and consent of the inventor. If he had knowledge of such use his assent is implied from his silence or the absence of effort to prevent it; and both knowledge and acquiescence may be inferred from circumstances.

Patents are now granted for the term of seventeen years, and confer on the patentee, his legal representatives and assigns, the

exclusive right to make, use, and vend the invention throughout the United States during that time.

WHAT MAY BE PATENTED.

This is defined in the statute above quoted as "any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement thereof."

The invention must be "new." By this is not meant that all the parts of a machine or the ingredients of a composition of matter were before unknown. A machine is said to be new in the sense of the patent law when its principles or mode of operation are different from any previously known. A new combination of old parts, producing a new result, or an old result in a new way, is a valid subject of letters patent.

It must be "useful." This means that it must not be harmful, or opposed to the public welfare, but promises some positive advantage. It is an implied requirement, also, that the means employed do actually produce the result attributed to them.

The patent is *prima facie* evidence both of the novelty and utility of the invention described in it as against an infringer.

It is held that the mere substitution of a new material to produce a known article does not constitute invention, nor does the substitution of a known equivalent for one of the elements of a known combination.

A patent cannot legally be granted, or is void if granted, for a mere property or function of matter, a motive power of the elements, or a physical law or force. But any of these being discovered, or a new use of any of them, the discoverer or inventor may have a patent for his mode or method of applying it to use. Hence a patent may be taken for a new "process" or method of producing a certain result, even though the process be carried out by the use of mechanism or other means not in themselves patentable. But the mere discovery that an old machine can be applied to a new use, without more, as, for instance, that a machine used for cutting wood can be used to cut iron, will not sustain a patent.

If the result of the process be a new product, that also may be patented as a new manufacture or composition of matter, as well as the process.

It is of the utmost importance that the description of the invention in every patent should be clear and accurate, and that

the claim should cover neither more nor less than the actual invention. This is the more important, as the right to surrender and re-issue a patent on account of defects in these respects, has recently been greatly limited by the courts. The claims especially should be drawn with great care, so as to cover all that the inventor is entitled to.

We therefore earnestly advise every inventor to employ some skillful and experienced solicitor to procure his patent for him whenever it is possible for him to do so.

It sometimes happens, however, that this cannot be done, but as printed copies of the Patent Laws, Rules of Practice and Forms, including full instructions for taking out a patent, can be obtained gratis by writing to the Commissioner of Patents, Washington, D. C., it seems unnecessary to give any further instructions on the subject.

The government fees for a United States patent, when there are no interference or appellate proceedings, are thirty-five dollars, exclusive of solicitor's fees and cost of drawings. Of this amount fifteen dollars are payable when the application is filed, and the balance on the allowance of the patent.

FOREIGN PATENTS.

The taking out of a patent in a foreign country does not prejudice a patent previously obtained here; nor does it prevent obtaining a patent here subsequently by a person otherwise entitled thereto unless the application for such foreign patent was filed more than twelve months, or in cases of designs four months, prior to the filing of the application in this country, in which case no patent will be granted.

An application for a patent in this country by any person who has previously filed an application for the same invention in a foreign country which affords similar privileges to citizens of the United States will have the same force and effect as the same application would have if filed in this country on the date of first filing of such foreign application, provided the application here is filed within twelve months, or in case of designs four months, from the date of such foreign application, and provided also that the invention has not been in public use or on sale in this country or been described in a printed publication for more than two years prior to the filing of the application in this country. When

application is made for a patent for an invention which has been already patented abroad, the inventor will be required to make oath, that, according to the best of his knowledge and belief, the same has not been in public use or on sale in the United States for more than two years prior to the application. An applicant who has obtained a foreign patent or patents, should state in what country or countries such patents have been obtained, and the dates and numbers thereof. The reason of this is, that the statute provides that the patent granted in this country shall expire with the foreign patent, or, if there be more than one, at the same time with that having the shortest unexpired term; and in no case can it be in force more than seventeen years.

MARKING PATENTED ARTICLES.

The statute provides that "it shall be the duty of all patentees, and their assigns and legal representatives, and of all persons making or vending any patented article for or under them, to give sufficient notice to the public that the same is patented; either by fixing thereon the word 'patented' together with the day and year the patent was granted; or when, from the character of the article, this cannot be done, by fixing to it, or to the package wherein one or more of them is enclosed, a label containing the like notice; and in any suit for infringement by the party failing so to mark, no damages shall be recovered by the plaintiff except upon proof that the defendant was duly notified of the infringement, and continued after such notice to make use, or vend the article so patented."

SALES.

The statute gives to the patentee the exclusive right of making, using and selling the patented invention. It has been held, however, by the Supreme Court of the United States that when he has sold a patented article his control over it is at an end, and that he cannot reserve a control over the re-sale or use of the article by fixing a minimum price for such re-sale, or by placing any limitation on its use.

ASSIGNMENTS AND GRANTS.

A patent may be assigned, either as to the whole interest or any undivided part thereof, by an instrument of writing. No

particular form of words is necessary to constitute a valid assignment; nor need the instrument be sealed, witnessed, or acknowledged. It is advisable, however, that every assignment be acknowledged before a notary public or other proper officer, as the certificate of the latter under his hand and seal is *prima facie* evidence of the execution of the instrument. A patent will, upon request, issue directly to the assignee or, assignees, of the entire interest in any invention, or to the inventor and the assignee jointly when an undivided part only of the entire interest has been conveyed. In every case where a patent issues or reissues to an assignee, the assignment must be recorded at the Patent Office at a date not later than that on which the final fee is paid; and the specification must be sworn to by the inventor. The patentee may also grant rights under the patent to be exercised by the grantee only within a specified territory. Every assignment and every grant of an exclusive territorial right must be recorded in the Patent Office within three months from the execution thereof; otherwise it will be void as against any subsequent purchaser or mortgagee for a valuable consideration without notice; but if recorded after that time, it will protect the assignee, or grantee, against any such subsequent purchaser whose assignment or grant is not then on record.

The receipt of assignments is generally acknowledged by the office. They will be recorded in their turn within a few days after their reception, and then transmitted to persons entitled to them.

(324.)

Form of Assignment of the Entire Interest in Letters Patent before issue, with Request that they be issued to the Assignee.

Whereas, I, _____, of _____, in the County of _____, and State of _____, have invented certain new and useful improvements in ploughs, for which I am about to make application for letters patent of the United States; and whereas _____ of _____ has agreed to purchase from me all the right, title, and interest which I have, or may have, in and to the said invention, in consequence of the grant of letters patent therefor, and has paid to me, the said _____ the sum of five thousand dollars, the receipt of which is hereby acknowledged: Now this indenture witnesseth, that for and in consideration of the said sum to me paid, I have assigned and transferred, and do hereby assign and transfer, to the said _____ the full and exclusive right to all the improvements made by me, as fully set forth and described in the specification which I have prepared and executed under date of _____ preparatory to the obtaining of letters patent of the United

States therefor. And I do hereby authorize and request the Commissioner of Patents to issue the said letters patent to the said _____ as the assignee of my whole right and title thereto, for the sole use and behoof of the said _____ and his legal representatives.

In Testimony Whereof, I have hereunto set my hand and affixed my seal this _____ day of _____, 19____

(Signature.) (Seal.)

Executed and Delivered in Presence of

(325.)

Form of Assignment of Patent or of an Undivided Interest therein.

TO ALL WHOM IT MAY CONCERN:

Whereas, _____ of _____ in the County of _____ and State of _____ did obtain letters patent of the United States for _____, which letters patent bear date _____ and are numbered _____ (*If the assignment is made by an assignee add, and whereas _____ is now sole owner of said letters patent, or of a one-half interest in said letters patent as the case may be.*)

And Whereas, _____ is desirous of acquiring an interest therein: Now this indenture witnesseth that in consideration of the sum of _____ in hand paid, the receipt of which is hereby acknowledged, I, the said _____, have assigned, sold, and set over, and do by these presents assign, sell, and set over unto the said _____ all (*or one-half, as the case may be*) the right, title, and interest I have in and to the said letters patent and the invention thereby secured.

The same to be held and enjoyed by the said _____ for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters were granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In Testimony Whereof, I have hereunto set my hand and affixed my seal this _____ day of _____, 19____.

(Signature.) (Seal.)

Sealed and Delivered in Presence of

(326.)

Form of a Grant of a Territorial Right in a Patent.

Whereas, I, _____ of _____ in the County of _____ and State of _____, did obtain letters patent of the United States for _____ which letters patent bear date the _____ day of _____, 19____; and whereas _____ of _____ is desirous of acquiring an interest therein; Now this indenture witnesseth, that for and in consideration of the sum of two thousand dollars, to me in hand paid, the receipt of which is hereby acknowledged, I have granted, sold, and set over, and do hereby grant, sell, and set over, unto the said _____ all the right, title, and interest which I have in

the said invention, as secured to me by said letters patent, for, to, and in the several States of New York, New Jersey, and Pennsylvania, and in no other place or places; the same to be held and enjoyed by the said _____ for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters-patent are granted (if it is intended to grant for any extended term, then add—and for the term of any extension thereof), as fully and entirely as the same would have been held and enjoyed by me had this grant and sale not been made.

In Testimony Whereof, I hereunto set my hand and affix my seal this _____ day of _____, 19____.

(Signature.) (Seal.)

Sealed and Delivered in Presence of

LICENSES.

The patentee or any assignee of the patent or of any undivided interest therein may license others to practice the invention to any extent, and the grantee of a territorial interest may do the same within the limits of the territory granted to him.

Such licenses should be made in writing, but this is not absolutely essential.

The statute does not require that licenses should be recorded although it is common to do so.

No special form is prescribed for licenses, and their terms will vary according to the special contract between the parties.

The following forms, however, may be useful as guides:

(327.)

License—Shop Right.

In consideration of the sum of fifty dollars paid by the firm of S. J. & Co., of L., in the county of M. and State of N., I do hereby license and empower the said S. J. & Co., to manufacture in said L., the improvement in cotton seed planters, for which letters patent of the United States No. 71,846 were granted to me, November 13, 19____, and to sell the machines so manufactured throughout the United States, to the full end of the term for which said letters patent are granted.

Signed at L. aforesaid this 22d day of April, 19____.

A. B.

(328.)

License—not Exclusive—with Royalty.

This Agreement, Made this 12th day of September, 1900, between A. B. of L., in the County of M. and State of N., party of the first part, and C. D. & Co. of O., in the County of R. and State of S., party of the second part, witnesseth, that whereas letters patent of the United States No. 87,540, for

an improvement in horse rakes, were granted to the party of the first part, dated October 4, 19—, and whereas the party of the second part is desirous of manufacturing horse rakes containing said patented improvement. Now therefore the parties have agreed as follows:

1. The party of the first part hereby licenses and empowers the party of the second part, subject to the conditions hereinafter named, to the end of the term for which said letters patent were granted, to manufacture horse rakes containing the patented improvements and to sell the same within the United States.

2. The party of the second part agrees to make full and true returns to the party of the first part, upon the first days of July and January in each year, of all horse rakes containing the patented improvement manufactured by them.

3. The party of the second part agrees to pay to the party of the first part five dollars as a license fee upon every horse rake manufactured by said party of the second part containing the patented improvements, said payments to be made within ten days after the days above provided for the semi-annual returns.

4. Upon failure of the party of the second part to make returns or to make payment of license fees, as herein provided for, thirty days after the days herein named, the party of the first part may terminate this license by serving a written notice upon the party of the second part; but the party of the second part shall not thereby be discharged from any liability to the party of the first part for any license fees due at the time of the service of said notice.

In Witness Whereof, The parties above named have hereunto set their hands the day and year first above written.

A. B.

C. D. & Co.

THE DOMINION OF CANADA.

The Patent Law of the Dominion of Canada in its leading principles and purposes is very similar to the law of the United States. The principal differences are as follows:

The Patent Office is a part of the Department of Agriculture. There is a Commissioner of Patents, and applications for any purpose connected with patents must be made to him.

No inventor can have a patent if his invention has been in public use or on sale more than a year in Canada, previous to his application, with the consent of the inventor. Nor if a patent for the same exists in another country more than twelve months previous to application. If, during said twelve months, any person begins to manufacture the article in Canada, he shall have the right to continue the same. Applicant must elect a domicile in Canada for the purposes of his patent, and declare the same in

his petition. The article, after one year, must be made in Canada, and not imported; and the manufacture must begin within two years from the granting of the patent; but these limits may be extended by the Commissioner. The patent is granted for six, twelve or eighteen years, at option of applicant.

DESIGNS.

Patents for Designs are provided for by section 4929 of the Revised Statutes of the United States, as follows:

“Any person, who by his own industry, genius, efforts, and expense, has invented or produced any new and original design for a manufacture, bust, statue, alto-relievo, or bas-relief; any new and original design for the printing of woolen, silk, cotton, or other fabrics; any new and original impression, ornament, pattern, print, or picture, to be printed, painted, cast, or otherwise placed on or worked into any article of manufacture; or any new, useful, and original shape or configuration of any article of manufacture, the same not having been known or used by others before his invention or production thereof, or patented or described in any printed publication, may upon payment of the fee prescribed by law, and other due proceedings had, the same as in cases of inventions or discoveries, obtain a patent therefor.”

Patents for designs may be granted for the term of three years and six months, or for seven years, or for fourteen years, as the applicant may in his application elect.

The fee for a design patent for three and one-half years is ten dollars, for one for seven years fifteen dollars, and for fourteen years thirty dollars, payable in each case when the application is filed.

In all other cases in which fees are required the same rates are charged as in the case of patents for inventions or discoveries.

The proceedings on applications for patents for designs are substantially the same as in those for inventions or discoveries.

Forms and Rules of Procedure can be obtained by application to the Commissioner of Patents.

The specification must distinctly point out the characteristic features of the design and carefully distinguish between what is old and what is claimed to be new.

The design must be represented by a drawing made to conform to the rules laid down for drawings of mechanical inventions.

TRADE-MARKS.

By the common law a merchant or manufacturer is entitled to the exclusive use of a "trade-mark" to designate his goods, provided he has used it so long that it has become generally recognized as his.

The trade-mark may consist of words, letters, figures, or drawings, or a combination of two or more of them.

It must, however, indicate only the origin or ownership of the goods to which it is applied, and not be descriptive of their character, quality, or composition.

Thus, for example, a miller may mark his flour with the figure of an eagle or with the name of his mill, and these marks will after a time be recognized as indicating that the flour so marked is made by him or at his mill.

But he cannot appropriate to his exclusive use such words as "snow white," "superfine," "family flour," or any other descriptive term, as any other person manufacturing a similar article has a right to describe it by any appropriate language.

So the name of the place where a manufacturer carries on business cannot be so appropriated as to prevent others in the same place from using it in connection with their goods.

No one will, however, be permitted to represent his goods as the goods of another, by imitating the latter's labels, descriptions, or peculiar methods of putting up his goods, even if the latter do not strictly constitute a trade-mark; and in all cases of this kind it is enough for the plaintiff to show that the imitation is sufficiently close as to deceive the public, although there be differences in the details.

If, however, the plaintiff is himself defrauding the public by falsely describing the character, quality, or composition of his goods, or when the articles themselves are injurious in their character, he can claim no assistance from a court of equity.

A trade-mark may be sold and assigned with the business with which it is connected or the factory where the goods are made to which it is applied. In the settlement of partnership affairs, or in connection with the sale of the good will of a business, it is often an item of great value.

The Act of February 20, 1905, as subsequently amended, provides for the registration in the Patent Office of trade-marks used

in commerce with foreign nations, or among the several States, or with Indian tribes.

A trade-mark may be registered by any person, firm or corporation, domiciled within the territory of the United States, or residing or located in any foreign country which affords similar privileges to citizens of the United States, or by the owner of a trade-mark resident or located in a foreign country when used on the products of a manufactory in this country belonging to such owner.

No trade-mark will be registered which consists of or comprises immoral or scandalous matter, or represents the flag or coat of arms or other insignia of the United States or of any State, municipality or foreign nation, or any emblem of a fraternal society, or any name, character, emblem, flag, banner, etc., adopted by any organization in any State and adopted and publicly used by such organization prior to date of adoption and use by applicant, or which is identical with a trade-mark now in use by another and appropriated to merchandise of the same descriptive properties, or so nearly resembles such a trade-mark that it will tend to confuse the public or deceive purchasers. No trade-mark which consists merely in the name of an individual, firm, corporation or association, not written, printed, impressed, or woven in some particular or distinctive manner or in association with a portrait of the individual, or merely in words or devices which are descriptive of the goods with which they are used, or of the character or quality of such goods, or merely a geographical name or term, or one used in any unlawful business or on any article injurious in itself, or used with the design of deceiving the public, or one which has been abandoned, will be registered. No portrait of a living individual may be registered as a trade-mark, except by the consent of such individual, evidenced by an instrument in writing. Nothing, however, shall prevent the registration of any mark which has been in actual and exclusive use as a trade-mark for ten years next preceding February 20, 1905. If the applicant is resident in a foreign country his statement must set forth that the trade-mark has been registered or application filed in that country, with the date thereof. Application for registration of a trade-mark previously registered in a foreign country affording similar privileges to citizens of the United States, if filed in this country within four months, shall have

same force and effect as if filed on the date of foreign application. Where an applicant for a trade-mark does not reside in the United States, he must designate by a notice in writing, filed in the Patent Office, some person residing within the United States on whom process or notice of proceedings may be served.

In case of conflicting applications for registration of a trade-mark, or in any dispute as to the right to use the same, the Office will declare an interference, and the proceedings for interference between applications for patents will be followed as nearly as practicable. Any person who believes he would be damaged by the registration of a trade-mark can oppose the same by filing in duplicate a written notice of opposition verified by the person under oath. Any person believing himself injured by the registration of a trade-mark can apply to have such trade-mark canceled, such application to be in duplicate under oath.

The term of a trade-mark is twenty years, with privilege of renewal for the same term on an application made not more than six months before its expiration. Those trade-marks granted before April 1, 1905, remain in force for the original term granted, and then may be renewed for twenty-year terms as with original applications. The fee payable on an original application for registration is ten dollars, and the same in each application for renewal.

Trade-marks may be sold and assigned with the good will of a business, but the sale or assignment must be made by instrument in writing duly acknowledged according to the laws of the country or State in which the same is executed. The assignment must be recorded within three months from the date.

A register of a trade-mark must give notice to the public that the trade-mark is registered, either by affixing thereon the words "Registered in U. S. Patent Office," or "Reg. U. S. Pat. Off.," or, when that cannot be done, by putting same words on a label placed on the packages or receptacles. No suit can be brought for infringement of a trade-mark unless this public notice is given, unless proof is offered that the defendant was duly notified of infringement and continued to use the same after such notice.

The Circuit and Territorial Courts of the United States and the Supreme Court of the District of Columbia have original jurisdiction of all suits at law or in equity representing trade-marks registered under the act, without regard to the amount in

controversy. Recovery on a judgment includes profit accruing to defendant and damages sustained by complainant. The several courts may grant injunctions pending suits, and may increase said judgment not exceeding three times the amount of the verdict, and may order copies and representations of infringing trade-marks destroyed.

In assessing profits, the plaintiff is required to prove the defendant's sales only. The defendant, on the other hand, must prove all elements of cost which are claimed.

Imported goods bearing foreign trade-marks injuriously imitating United States trade-marks will be refused entry at all United States custom-houses; and to prevent their entry, each owner of a trade-mark should lodge with the Commissioner of Patents a copy and description of it, copies of which will be forwarded to each collector or other proper officer of customs.

PRINTS AND LABELS.

The Act of Congress of June 18, 1874 (18 Statutes at Large, p. 78), provides for the registry of prints and labels in the Patent Office. Under the rules of the office the distinction between the two is that a label is intended to be impressed upon or affixed to an article or to the receptacle containing it, while a print is not. Only such prints or labels as properly belong to an article of manufacture and are descriptive thereof can be registered. A print or label may be registered by the proprietor who is a citizen of the United States, by an alien domiciled in the United States, by the citizen of a country granting similar rights to citizens of the United States, or by the proprietor by assignment from some other person entitled to register.

The application must be accompanied by ten copies of the print or label, and a registry fee of six dollars.

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Form of Application for Registration of Prints and Labels.

TO THE COMMISSIONER OF PATENTS:

The undersigned _____, a citizen of the United States (*or subject, etc.*), residing at _____, and doing business at _____, hereby applies as author (*or proprietor, and if the latter, give name and citizenship of author*) for registration of the print (*or label*) shown in the accompanying copies, ten of which are furnished. The print (*or label*) was first published with

Notice of Copyright thereon on _____; its title is _____, and it is used for advertising purposes for (or if a label, used on) _____ (kind of goods).

.....
Author or Proprietor.

Before filing the application the print or label must be published,—which in this connection means, publicly used or sold—with a notice of copyright thereon, consisting of the word “Copyright,” or “Cop’r,” the name of the proprietor and the year of publication. This notice of copyright must also appear on every copy of the registered print or label subsequently used or sold.

The certificate of registration will continue in force twenty-eight years, but may be renewed.

Prints and labels are assignable by written instrument signed by the proprietor.

Copies of the acts, relating to the registration of Trade-marks, Prints and Labels, with Forms and Rules of Procedure can be obtained by applying to the Commissioner of Patents.

CHAPTER XXXV.

COPYRIGHT.

The law of copyright is regulated by the Act of Congress of March 4, 1909 (35 Statutes at Large, Chap. 320), and subsequent minor amendments thereto.

The subjects of copyright may be books, including composite and cyclopædic works, directories, gazetteers and other compilations; periodicals, including newspapers; lectures, sermons, addresses prepared for oral delivery; dramatic or dramatic-musical compositions; musical compositions; maps; works of art, models or designs for works of art; drawings or plastic works of a scientific or technical character; photographs; prints and pictorial illustrations; motion pictures, photo plays, and motion pictures other than photo plays.

The Act grants to the author or proprietor the exclusive right to print, re-print, publish, copy and bind the copyrighted work;

to translate it, if it be a literary work, into other languages, or make any other variation thereof; to dramatize it or convert a drama into a novel or other form; to arrange or adapt it, if it be a musical work; and to complete and execute it if it be a model or design for a work of art; to deliver or authorize the delivery of it in public for profit, if it be a sermon, address or similar production; to perform or represent it, if it be a dramatic work not reproduced in copies for sale; to vend any transcript or record thereof, and to make any transcript or record thereof for performance or representation; to perform it publicly for profit if it be a musical composition, and for purposes of publication to make any arrangement or setting of it or of the melody, in any system of notation or record by which it may be re-produced.

When, however, the owner of a musical copyright has permitted the use of the work on parts of instruments, by which it is reproduced mechanically, any other person may make a like use of it by notifying the owner and paying him a royalty of two cents for each of such parts.

Compilations, abridgements, translations, etc., of works in the public domain, or of copyrighted works when produced with the consent of the owner of the copyright, or works republished with new matter, are regarded as new works subject to copyright, but without affecting the force or validity of any subsisting copyright on matter employed therein.

A foreign author or proprietor may have a copyright upon the same terms as a citizen; but only if he be domiciled in the United States at the time of the first publication of his work, or when the nation of which he is a citizen or subject grants to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, or protection equal to that secured to the foreign author by copyright act or treaty of the United States, or when such nation is a party to an international agreement providing for reciprocity in granting copyrights to which agreement the United States may become a party.

Copyright is secured by publication of the work, with notice of copyright consisting of the word "Copyright," or the abbreviation "Copr.," accompanied by the name of the proprietor, and, in a printed literary, musical or dramatic work, the year in which the copyright was secured by publication. In case of a book or other printed publication the notice is to be printed on the title

page, or page immediately following, and of a periodical on the title page or the first page of each separate number or under the title heading, or if a musical work on the title page or first page of music. Such notice must be affixed to each copy offered for sale. In case of maps, prints, photographs, works of art, etc., the notice may consist of the letter "C" enclosed within a circle, accompanied by the initials, monogram, mark or symbol of the copyright proprietor, provided that his name shall also appear on some accessible part of the work.

After publication there must promptly be deposited in the Copyright Office, or sent by mail addressed to the Register of Copyright, Washington, D. C., two complete copies of the best edition of the work, or, in case of a contribution to a periodical, for which special registration is requested, one copy of the issue or series containing such contribution, accompanied by an affidavit setting forth that the type from which the work was printed was set up, or the plates etc., made in the United States, and that the printing and binding were done there. Such affidavit is not required as to books of foreign origin in languages other than English, or works in raised characters for the blind, or books published abroad in the English language seeking interim protection.

Copyright of works of which copies are not reproduced for sale may be had by deposit, with claim of copyright, of one complete copy of the work, or a photographic print if the work be a photograph, or a photograph or other identifying representation if it be a work of art, or a plastic work or drawing.

In case of books published abroad in the English language before publication in this country, an interim copyright may be secured by deposit in the Copyright Office, within thirty days after publication, of one complete copy of the foreign edition, with request for reservation of copyright, and statement of name and nationality of author and copyright proprietor and date of publication. Whenever within said time said book shall be published in the United States, and the other requirements of the Act as to deposit of copies, registration, etc., are complied with, the copyright shall be extended to the full term.

In the case of each entry the person recorded as claimant of the copyright, on payment of a fee of one dollar—or fifty cents

in case of a photograph—is entitled to a certificate of registration under seal of the Copyright Office.

The original term of a copyright is twenty-eight years but provision is made in the Act for an extension for the further term of twenty-eight years, and for an extension of copyrights in existence at the date of the Act for a term not exceeding with the original term fifty-six years.

Copies of the Copyright Act with full directions for securing a copyright, forms of application and other necessary papers will be furnished, gratis, on application to the Register of Copyrights, Washington, D. C.

A copyright is assignable by an instrument in writing signed by the owner—and, if executed abroad, acknowledged before a consular officer or secretary of legation—and recorded in the Copyright Office within three calendar months after its execution in the United States, or within six months after execution if executed abroad.

In case of infringement the Act provides remedies by injunction, the payment of specified damages and the surrender of piratical copies.

Wilful infringement of copyright for profit, and fraudulently marking works as copyrighted which are not so, are also punishable by fines.

The importation from abroad of copyrighted books not printed or manufactured in the United States is forbidden except in the following cases: (a) works in raised characters for the blind; (b) foreign newspapers or magazines containing matter authorized by owner of copyright; (c) the authorized edition of a book in a foreign language of which only a translation has been published in this country; (d) any book published abroad with authorization of owner of copyright as follows, (1) when imported, not more than one copy at a time, for individual use and not for sale, provided it be not a foreign reprint of a book by an American author copyrighted in this country, or (2) when imported by authority or for use of the United States, or (3) when imported for use and not for sale, not more than one copy in an invoice, for any society or institution incorporated for educational, literary, philosophical, scientific or religious purposes, or for the encouragement of the fine arts, or for any college, academy, school or seminary of learning, or for any State, school, college, uni-

versity, or free public library in the United States, or (4) when such books form parts of libraries or collections purchased *en bloc* for the use of societies, institutions, etc., above enumerated, or form parts of the libraries or personal baggage belonging to persons arriving from foreign countries and not intended for sale.

It is held that letters may be the subject of copyright; but the right of publication belongs to the writer and his representatives, and not to the receiver, who has, at most, only a special property in them.

It has also been held by the Supreme Court of the United States that the control of the owner of copyright over a copyrighted volume ends when the book is sold, and that a condition imposed upon the purchaser that he shall have the right to sell it only at a fixed price is void.

A Canadian copyright may be taken out by "any person resident in Canada, or any person, being a British subject and resident in Great Britain or Ireland. The book must be printed and published in Canada.

(330.)

Agreement between Author and Publisher.—Short Form.

This Agreement, Made this _____ day of _____, in the year 19____, by and between (*name of author*) and (*name of publisher*) witnesseth as follows:

The said (*name of author*) being now preparing a work, to be called _____ (*or on the subject of* _____) to be in _____ volume hereby agrees and promises to complete the same for the press as rapidly as practicable, and to sell to the said (*name of the publisher*) for the sum of _____ dollars, to be paid as hereinafter mentioned, the exclusive right of printing, publishing, and selling the first edition thereof, to consist of _____ copies. The copyright of said work to be secured and retained by said (*name of author*) as author and proprietor.

And the said (*name of publisher*) hereby agrees and promises to publish said edition of _____ copies, and to pay to said (*name of author*) the said sum of _____ dollars, by his promissory, negotiable notes, payable at average credit of _____ months from the day of publication of said edition; and also to give him _____ copies of said work, for presentation.

Witness our hands, in duplicate, this _____ day of _____

(*Signature of author.*)

(*Signature of publisher.*)

(331.)

Agreement between Author and Publisher.—Fuller Form.

Articles of Agreement, Made this _____ day of _____, A. D. 19____, by and between _____ of the first part, and _____ of _____, State of

_____, booksellers and publishers, of the second part, witnesseth, That the said (*name of the author*) in consideration of the agreements of the said (*name of publishers*) hereinafter contained, hereby agrees with them and their representatives and assigns that he will deliver to them on or before the _____ day of _____, A. D. 19____, the manuscript of a book now in course of preparation by him, to be entitled _____, said manuscript to be properly prepared for the press, and to be sufficient in amount for _____ volume of not less than _____ pages, _____ similar to those of _____ that he will secure in his own name a good and valid copyright thereof for the United States, and any renewals or extensions of such copyright to which he may hereafter be entitled, and will defend the same from all infringements and adverse claims, and will save the said _____ and their representatives and assigns, harmless and indemnified from all such infringements and claims, and from all damage, costs, and expenses arising to them by reason thereof; that he will license and allow the said _____ and their representatives and assigns, but no other party or parties, to print, publish, and sell the aforesaid book, and any revisions of the same, during the continuance of any copyrights or renewals thereof which he may obtain therefor; provided, however, that the said _____ and their representatives and assigns shall in substantial good faith keep and perform their agreements hereinafter contained; and that during the continuance of the exclusive rights hereby granted, he will revise said book as occasion may require, and will with all reasonable diligence and speed superintend in the usual manner of authors the printing of all editions thereof; and will not prepare, edit, or cause to be published, in his name or otherwise, anything which may injure or interfere with the sale of the aforesaid book.

And the said (*name of the publishers*) in consideration of the foregoing agreements of the said author of the aforesaid book, hereby agree on their part that they will, upon the delivery to them of the manuscript thereof as aforesaid, proceed at once to print and publish an edition of said book, of at least _____ copies, _____ of which they will deliver to the said author for his own use without charge; that they will subsequently, from time to time, during the continuance of their enjoyment of the exclusive rights herein granted them, print and publish such other editions of said book as the demand for the same may require, _____ copies of each of which they will deliver to said author for his own use without charge; that they will use their best exertions to secure the speedy sale of all such editions published by them as aforesaid; and that, upon the publication of each and every edition of said book, they will pay unto the said author, or his representatives or assigns, a sum equal to _____ upon each and every copy of which said edition shall consist (excepting, however, said copies to be given to said author as aforesaid, and such other copies as may be used for presentation to editors and others for the purpose of obtaining reviews and notices, or otherwise to promote the sale of said book), which said sum shall be paid as follows (*state the manner and times of payment, as by cash or notes*) but from any sum so to be paid as aforesaid shall first be deducted the cost of any alterations or corrections, exceeding ten per cent. of the cost

of first setting up the type, made by the said author in said book after the portion altered or corrected is in type.

In Witness Whereof, The said parties have hereto, and to another instrument of like tenor, set their hands the day and year first above written.

(Signature of author.)

(Signature of publishers.)

(Witnesses.)

(332.)

An Assignment of a Copyright.

To all Whom it may Concern: Whereas I, (name of assignor) of _____ in the County of _____, and State of _____ did obtain a copyright from the United States for a work entitled _____, and the certificate of said copyright bears date _____, A. D. nineteen hundred and _____

Now this Deed Witnesseth, That for a valuable consideration, viz: _____ to me in hand paid, the receipt of which is hereby acknowledged, I have assigned, sold, and set over, and by these presents do assign, sell, and set over unto the said (name of assignee) all the right, title, and interest I have in the above book (or design, etc.) as secured to me by said copyright. The same to be held and enjoyed by the said (name of assignee) for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said copyright was issued, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In Testimony Whereof, I have hereunto set my hand and affixed my seal, this _____ day of _____ in the year of our Lord one thousand nine hundred and _____

(Signature.) (Seal.)

Sealed and Delivered in Presence of

CHAPTER XXXVI.

MEANS PROVIDED FOR THE RECOVERY AND COLLECTION OF DEBTS.

1. ARREST AND IMPRISONMENT.—In many States, no person can be arrested or imprisoned for debt. In California no female, and in Louisiana no female, and no person who has not a domicile in the State, and in Ohio no female, nor any officer or soldier of the Revolutionary army, can be arrested or imprisoned for debt. In all the States, the *intention* of the law is to limit imprisonment to those cases in which either fraud was committed in the contraction of the debt, or the debtor intends to abscond out of the

reach of process. The provisions to effect this are very various. Generally, the plaintiff must file in the clerk's office, or indorse upon the writ, an affidavit of the facts on which he grounds the right of arrest. In some of the States, provision is made for the imprisonment on execution of a debtor who can be found to possess, and refuses to surrender, property or interest, real or personal, which might be made available for the payment of his debts.

2. THE TRUSTEE PROCESS.—The trustee process, or garnishee process, or process of foreign attachment,—by all which names it is known,—is now nearly or quite universal. It is substantially this: A owes B a debt; but A has no property in his hands or possession which B can get at; but A has deposited in the hands of C, goods, or property, or credits of some kind, or A has a valid claim against C for services rendered, or money loaned, or goods sold, or something else; and this B gets by suing A, not with a common writ, but with a *trustee* writ, so called, in which he declares that C is the *trustee* of A, for property, etc.; and on this writ, if B recovers judgment against A, he will have an execution against all A's property in the hands of C, and all A's valid demands against C. But C, when notified, may come into court, and, in answer to all questions put to him, declare that he (C) has no property in his hands belonging to A, and that he does not owe A anything. And then the plaintiff may shape the questions as he pleases, to draw out the truth.

No one is adjudged trustee, or made to pay to the creditor the debt due to the debtor, if he has given a negotiable note for it, because he might have to pay it again to an honest indorsee. Nor if the debt is not certainly due; nor, generally, if it is due from the trustee in any official capacity, which will require him to account over for the money in his hands; nor if the debtor has recovered a judgment against the trustee, on which execution may issue.

The laws of the British Provinces for the collection of debts are similar in substance and purpose to those of the United States, with similar provisions against abuse or oppression.

3. THE HOMESTEAD.—In most of the States, a *homestead* is protected from creditors, and exempted from all attachment or execution, excepting in some States for taxes, or wages of labor to a certain amount.

Various provisions are made in each of these States to combine a due protection of the creditor with proper prevention of fraud. The most common means are by requiring that "the homestead" should be distinctly defined and set apart, and in many cases by the additional requirement, that the description and location of it should be put on public record.

In all the States there are also exemption laws. These provide very generally that bed and bedding and other necessary furniture, needful clothing, a Bible and school-books, and a certain amount of food and fuel, shall not be taken on attachment or execution. In some states, the tools of a trade, the uniform, arms, and equipments of soldiers or officers in the militia, the family burying-vault and gravestones, a team or yoke of oxen, bees with their hives and honey, a boat for fishing, etc., are exempted. These statutes often enumerate the articles exempted quite minutely, and then add, that necessary articles to a certain amount of value, usually one or two hundred dollars, are also exempted.

We give annexed to this chapter an Abstract of the Laws of all the States relating to the collection of debts.

ABSTRACT OF LAWS RELATING TO THE COLLECTION OF DEBTS.

INCLUDING ACTIONS, ATTACHMENT, ARREST, GARNISHMENT, JUDGMENT, EXEMPTIONS, AND HOMESTEAD.

ALABAMA.

ACTIONS. Civil actions are begun by service of summons, issued by the clerk of court, and accompanied by the complaint of the plaintiff. All actions on contracts for the payment of money may be joined in one.

ATTACHMENT may be levied on any real estate, or personal property, or by garnishment. It may issue, (1) to enforce the collection of any debt, (2) for any money demand, (3) to recover damages for the breach of any contract, or, (4) when the action sounds in damages merely, on affidavit by the plaintiff that the defendant resides out of the State, or has absconded, or has secreted himself, or is about to remove, or has or is about to dispose of his property fraudulently. Affidavit must set forth amount of debt or demand, that it is justly due and that attachment is not for purpose of harassing defendant. Plaintiff must also give bond to defendant to prosecute attachment to effect, and pay all damages sustained by wrongful suing out of attachment, except in action against non-resident.

GARNISHMENT. The judgment creditor in any action may obtain a process of garnishment against any person supposed to be indebted to the defendant,

and the plaintiff may obtain such process when a summons and complaint have issued in any case upon giving bond.

JUDGMENT is a lien for ten years, after filing a certificate of the clerk of the court in the office of the judge of probate of the county where it was obtained.

STAY LAW. In actions before a justice of the peace defendant may, at any time before execution is issued, stay the issue thereof thirty days, if the judgment be less than twenty dollars, or sixty days if over twenty dollars, by giving a bond with surety in double the amount of the judgment. In cases in the Circuit court execution can be stayed only by appeal to the Supreme Court and giving bond.

EXEMPTIONS. Personal property, to be selected by the debtor, to the value of one thousand dollars, is exempt from sale on execution, or other process of court, also the homestead of the debtor, not exceeding one hundred and sixty acres and not exceeding two thousand dollars in value, not in any city, town, or village, or in lieu thereof, any lot in any city, town, or village with the buildings thereon owned and occupied by the debtor, not exceeding two thousand dollars in value. Also are exempt, lots in cemeteries, pew or seat in church, proper wearing apparel, family portraits, books used in the family, and the wages or salaries of laborers or employees, for personal service, not exceeding twenty-five dollars per month.

ALASKA.

ACTIONS. There is but one form of civil action, which must be prosecuted by the real party in interest. Actions are begun by filing a complaint with the clerk of the court, and the issuance of a summons thereupon.

ATTACHMENT is allowed for unsecured contract claims for the payment of money, or in action against non-resident. The plaintiff must file an undertaking with sureties. All property, including debts not due, is attachable.

ARREST. The defendant may be arrested in the following actions: (1) Recovery of money or damages where he is about to remove with intent to defraud creditors; for injury to person or property, including conversion; (2) Fine or penalty, embezzlement or misapplication of funds by a public officer or one in a fiduciary capacity; (3) To recover personal property unjustly detained, where it is concealed, disposed of, or removed; (4) Where the defendant is guilty of fraud in contracting the debt or obligation, or of concealing or disposing of property for the recovery of which the action is brought; (5) When the defendant has removed or disposed of property with the intent of defrauding creditors, or is about to do so. No female can be arrested in a civil action, except for injuries to person or property. In all cases the plaintiff must give an undertaking with sureties.

GARNISHMENT. This is provided for by the attachment law.

JUDGMENT is a lien for ten years after docketing thereof, in the county where it was issued, or where the transcript is filed, upon all real property therein belonging to the judgment debtor.

EXEMPTIONS. (1) Earnings for personal services within sixty days; (2) Books, pictures, and musical instruments to the value of seventy-five dollars; (3) Necessary wearing apparel, but jewelry, including watches, not to

exceed \$100 in value; (4) The tools, implements, or other property necessary to enable the debtor to carry on his trade, occupation, or profession, not to exceed \$500 in value; (5) To the head of a family enumerated property not exceeding \$300 in value; (6) The seat or pew occupied by the family; (7) All property of public corporations, and the homestead of any family not to exceed \$2,500 in value, or more than 160 acres in the country, or one-fourth of an acre in a city.

ARIZONA.

ACTIONS. There is but one form of civil action. This is commenced by filing a complaint with the clerk of the court and taking out a summons. Actions must be brought in the name of the real party in interest. If the plaintiff be a non-resident, defendant may require security for costs.

ATTACHMENT. Will issue on filing with the clerk an affidavit setting forth that defendant is indebted to plaintiff on contract for direct payment of money made or payable in the State, that it is unsecured and that demand has been made for payment, or that defendant is a non-resident or foreign corporation, or that he is about to remove property from jurisdiction of court to avoid payment, or that the action is brought on judgment of another State or Territory, and that attachment is not sought for malicious purpose or to hinder or delay creditors. Attachment may issue on debt or demand not due, on affidavit of first ground above stated, or that defendant is about to remove permanently from the State and has refused to secure the debt, or has secreted property to defraud creditors, or is about to remove property from the State without leaving sufficient to pay his debts, or has or is about to dispose of property to defraud creditors, and also that the attachment is not sued out to injure or harass defendant, and that plaintiff will probably lose his debt unless attachment issues. Plaintiff must give bond with sureties to prosecute suit and for damages and costs in case attachment was wrongfully obtained.

ARREST—not authorized for debt. But every debtor who fraudulently removes from territory or fraudulently conceals or disposes of property with intent to defraud or hinder creditors is punishable by fine and imprisonment.

GARNISHMENT. Writ issues on plaintiff's filing affidavit showing either that an original attachment has been issued, or that debt is just, due, and unpaid and that defendant has not property sufficient to satisfy debt, and that the garnishment is not sued out to injure either defendant or garnishee; or that plaintiff has a judgment and that defendant has not property to satisfy it; and further, that the garnishee is indebted to defendant or has effects of defendant, or that garnishee is a joint stock company and defendant owns shares or some interest therein. If application is made on second ground above stated plaintiff must give bond with sureties for damages and costs.

JUDGMENT is a lien for five years on all real estate owned by the defendant in the county where the judgment is rendered or where a transcript of the same has been filed.

STAY LAW. There is no stay of execution except in case of appeal.

EXEMPTIONS. To every head of a family a homestead not exceeding twenty-five hundred dollars in value; personal property to the value of five hundred dollars to be selected by the debtor, and earnings for personal services for thirty days preceding the levy. Also prospector's tools and camp outfit.

ARKANSAS.

ACTIONS. Forms of actions existing before the adoption of the code are abolished, and there is now one form of action for private rights, called a *civil action*. The civil action is begun by filing with the clerk of the court a complaint and causing a summons to issue thereon. Several causes of action may be joined in the same complaint, and should be in the name of the real party in interest.

ATTACHMENT. The plaintiff may have an attachment for the recovery of money, including damages, when the defendant is a non-resident of the State; or has been absent from the State four months; or has departed with intent to defraud his creditors; or has left county to avoid service of summons, or so conceals himself that summons cannot be served on him, or has removed his property from the State, or is about to do so, not leaving enough to satisfy the claims of creditors; or has disposed of his property, or is about to do so with fraudulent intent to cheat, hinder, or delay his creditors. An order of attachment is made by the clerk of the court on the filing by the plaintiff of an affidavit showing the nature and amount of the plaintiff's claim, that it is just, and the existence of one of the grounds of attachment above mentioned, and filing a bond of indemnity to the defendant.

ARREST. The defendant in a civil action may be arrested on filing by the plaintiff with the clerk of the court, of an affidavit showing the nature of the claim, and charging the defendant with fraud in contracting the debt, that it is a just claim, and the amount expected to be recovered, and that the affiant believes that the defendant is about to depart from the State, and has concealed his property with the intent to defraud his creditors, or that he has property and is about to depart from the State without leaving enough to satisfy the plaintiff's claim, and filing a bond of indemnity.

GARNISHMENT. Process of garnishment may issue whenever the plaintiff believes that any person is indebted to the defendant, or has in his hands or possession goods and chattels, moneys, credits, etc., belonging to defendant, except for wages less than two hundred dollars, provided, if garnishment issue before judgment, that plaintiff shall give a bond of indemnity.

JUDGMENT rendered by the Supreme or Circuit Court of the State, or by the District or Circuit Court of the United States, is a lien on the real estate of the defendant lying in the county for which the court is held, and becomes a lien on lands in any other county on filing a transcript with the clerk of the County Circuit Court. The lien continues for three years.

STAY LAW. Execution may be stayed six months, when the judgment is a decree for money, by giving a bond with good surety, except in actions against a collecting officer, attorney, or agent, or by a surety against his principal, or in a suit brought to enforce a vendor's or mortgagee's lien.

EXEMPTIONS. Personal property of a person unmarried and not the head of a family to the value of two hundred dollars, in addition to wearing apparel, unless the debt was contracted for the purchase price thereof. Personal property of a person married or the head of a family to the value of five hundred dollars, in addition to wearing apparel. Uniform and equipments of members of the State Guard. The wages for not exceeding sixty days of all laborers and mechanics. The homestead of a married man or the head of a family, except on judgments for the purchase money, or to enforce specific liens against the property, or for debts due in a fiduciary capacity. Such homestead, if outside of a town or village, shall consist of not exceeding one hundred and sixty acres of land, with the improvements thereon, occupied as a residence, in all not exceeding in value twenty-five hundred dollars, or not less than eighty acres without regard to value. If within a city, town, or village and owned and occupied as a residence, it shall consist of not exceeding one acre of land with improvements, not in all exceeding in value twenty-five hundred dollars, or not less than a quarter of an acre without regard to value.

CALIFORNIA.

ACTIONS. There is only one form of action for private remedies, which is commenced by filing a complaint, and issuing a summons thereon, directed to the defendant, and must be brought in the name of the real party in interest.

ATTACHMENT. A writ of attachment may issue, in actions on contracts for the direct payment of money made or payable in the State, and not secured or where security has become valueless, and in actions of contract or for injury to property in the State against a non-resident defendant, on filing with the clerk of the court an affidavit that the defendant is actually indebted to the plaintiff, stating the amount due, and also that the action is one of those above specified; and filing a bond of indemnity to the defendant.

ARREST. The defendant may be arrested in an action for the recovery of money or damages, when he is about to leave the State with intent to defraud his creditors, or in an action to recover possession of personal property when the property has been fraudulently concealed or disposed of and cannot be found, or when the defendant was guilty of fraud in contracting the debt, or of embezzlement or fraudulent misapplication of money or property, or of misconduct or neglect in office, or in professional employment, or of wilful violation of duty, or where the defendant has removed or disposed of his property with intent to defraud his creditors. The order for arrest is obtained from a judge of the court, on affidavit of one or more of the above causes, and furnishing security to defendant for damages in case the arrest proves unlawful. No female can be arrested in any civil action.

GARNISHMENT. Debts due the defendant, and credits or personal property of the defendant in the hands of a third party may be attached by serving a copy of the writ, and a notice that the debts, credits, or personal property are attached.

JUDGMENT is a lien on real property of the debtor, not exempt from being taken on execution, which is situated in the county where the action was brought, and becomes a lien on real estate in other counties by filing a transcript of such judgment in the several counties. The lien continues for five years.

STAY LAW. The power of staying execution for a reasonable time is discretionary with the court. An appeal, accompanied by sufficient security, operates as a stay.

EXEMPTIONS. Chairs, tables, desks, and books to the value of two hundred dollars, necessary household furniture, including one sewing machine and one piano, stoves, stovepipe, and utensils, wearing apparel, beds, bedding, and bedsteads, family portraits and pictures painted by any member of the family, provisions and fuel actually provided for three months, three cows and their sucking calves, four hogs with their sucking pigs, and food for such cows and hogs for one month; farm utensils not exceeding one thousand dollars in value, two oxen, or two horses, or two mules, and harness, one cart or buggy and two wagons, and food for said animals for one month, seed, grain, or vegetables for sowing, not exceeding in value two hundred dollars; and seventy-five bee-hives, and one horse and vehicle belonging to any person who is maimed or crippled, the same being necessary to his business; tools of mechanics or artisans; the office furniture, records, and seal of a notary public; the instruments of surgeons, dentists, physicians, surveyors, with their professional libraries and office furniture; the professional libraries and office furniture of lawyers, judges, ministers, editors, school and music teachers, and the indexes, abstracts, books, papers, maps, and office furniture of searchers of records necessary to be used in their profession, instruments actually used by music teachers in giving instructions, also typewriters used by owner in making his living, also one bicycle; the cabin of a miner, not exceeding five hundred dollars in value, with all the implements and gear necessary for his business, not exceeding five hundred dollars in value, with two horses, mules, or oxen, and harness necessary to operate the mine, and food for the same for one month, and the miner's claim worked by him, not exceeding one thousand dollars in value; two oxen, mules, or horses, and harness, with food for the same for one month, and the cart or other vehicle by which carters, hackmen, peddlers, etc., habitually earn their living, one horse, vehicle, and harness used by a physician, constable, or minister in the practice of his profession, with food for such animals for one month; fishing boat and net of fisherman not exceeding five hundred dollars; poultry not worth more than seventy-five dollars; seamen's and sea-going fishermen's wages not exceeding three hundred dollars; the earnings of the judgment debtor for personal services rendered within thirty days next preceding the levy, when it appears by affidavit that such earnings are necessary for family support, but only half of such earnings are exempt when the debt is for necessities; shares in homestead associations not exceeding one thousand dollars, when the debtor has no homestead selected; nautical instruments and wearing apparel of any mariner; life insurance policies, when the premium does not exceed five hundred dollars; all firearms required by law to be kept by any person, one rifle and one shot-

gun selected by the debtor; all material not over one thousand dollars purchased in good faith for use in or about to be applied in good faith to the construction, alteration, or repair of any building, mining claim, or other improvement, except upon a judgment recovered for its price, or foreclosure of a mortgage thereon, all machinery, etc., necessary in construction of artesian wells or surface wells to the value of one thousand dollars; shares of stock in any building and loan association to the value of one thousand dollars; also a homestead, consisting of the land on which the debtor resides, to be selected by him, to the value of five thousand dollars, if the head of a family, or one thousand dollars of any other person; moneys derived from U. S. pension.

COLORADO.

ACTIONS. There is only one form of action in civil cases, and actions are begun by filing with the clerk of the court a written complaint, or by the service of a summons. Non-residents must give security for costs.

ATTACHMENT. Writ of attachment may issue on filing with the clerk of the court a bond with sureties in double the amount claimed, and an affidavit, signed by the plaintiff or on his behalf, stating the nature and amount of the claim, as near as may be, and that defendant is a non-resident or a foreign corporation or a corporation whose chief office or place of business is out of the State, or that he conceals himself or stands in defiance of an officer so that process cannot be served on him, or that for more than four months defendant has been absent from the State, or his whereabouts unknown, the indebtedness having been due during the whole of said period, or that he is about to remove his property from the State with intent to defraud or delay creditors; or that he has fraudulently assigned, concealed, removed, or disposed of his property to hinder or delay creditors, or is about to do so; or that he is about to depart from the State with the intention of having his effects removed from the State; or that he has failed or refused to pay the price of any article delivered to him which should have been paid for on delivery, or to pay for any services rendered by plaintiff at his request, which were to be paid for when said services were rendered; or that the debt was fraudulently contracted; or that defendant procured property of plaintiff by false representations or fraudulent conduct. Attachment may issue on debts not due if attachment levies on defendant's property are sufficient to render him insolvent. Writs of attachment may issue on Sunday or on legal holidays in urgent cases.

ARREST. No person can be arrested on mesne process, and only on execution when it is in an action of tort in which the finding shall be for the plaintiff, and shall state that the defendant was guilty of malice, fraud, or willful deceit in committing the tort, and in this case he may be imprisoned for one year, or until the judgment is paid.

GARNISHMENT. Plaintiff may have a writ of garnishment upon the issuing of a writ of attachment, or at any time thereafter, and if the sheriff cannot find any property of the defendant, or sufficient to satisfy the attachment he may summon such persons as plaintiff may direct, who are indebted to, or have goods, effects, or credits of the defendant in their hands;

and in any case on the return of an execution unsatisfied, a writ of garnishment may issue.

JUDGMENT becomes a lien on the real estate of the defendant in any county by filing in such county an abstract of the judgment, and continues as such for six years, but execution must issue within one year. From the time that the execution is delivered to the officer the judgment becomes a lien on all the goods and chattels of the debtor.

STAY LAW. There is no stay of execution in Colorado except on appeal or in case of a writ of error by a supersedeas.

EXEMPTIONS. The following property of a person being the head of a family is exempt, and if the head of the family dies the family is entitled to the same exemption: The pictures, school-books, and library of the debtor; a seat or pew in church; one burial lot; necessary wearing apparel of the family; all beds and bedding, stoves and cooking utensils used by the debtor or his family, and other household furniture not exceeding one hundred dollars in value; provisions for the debtor and his family for six months, and fuel for six months; one bicycle; one sewing machine; the tools, implements, or stock-in-trade of a mechanic, miner, or other person, used and kept for the purpose of trade, not exceeding in value two hundred dollars; the library and implements of professional men, not exceeding three hundred dollars; working animals to the value of two hundred dollars; one cow and calf, ten sheep, and the necessary food for the same for six months, provided or growing, or both; also one farm wagon, one plow, harrow, and other farm implements, including harness and tackle for the team, not exceeding fifty dollars. The wearing apparel and the working animals of any person to the value of two hundred dollars and U. S. pension money are also exempt from execution; the earnings of husband or wife, if the family is dependent in whole or in part on them for support, are exempt to the amount of sixty per cent. of the amount due at the time of levy, when such family resides in the State. Every householder, the head of a family, is entitled to a homestead to the value of two thousand dollars while such homestead is occupied by the owner or his or her family, but to secure this he must cause the word "homestead" to be entered on the margin of the recorded title signed by himself and attested by the recorder, together with the date of record.

CONNECTICUT.

ACTIONS. There is but one form of civil action, which is commenced by writ of summons or attachment, accompanied by the complaint, which contains a statement of the facts constituting the cause of action and a demand for the relief sought.

ATTACHMENT. The defendant's estate, real or personal, may be attached in all complaints containing a money demand at the commencement of the action, or at the discretion of the court during the pendency of the same.

ARREST. Defendant cannot be arrested in any action founded on contract merely, except for breach of promise to marry, misconduct or neglect in any office or professional employment, or in actions against a public officer, trustee, or person acting in a fiduciary capacity to recover moneys received by him. Defendant may be arrested on mesne process or execution when the

declaration sets forth that he contracted the debt by fraud, or that he conceals, removes, or conveys away his property to prevent its being taken by legal process, or refuses to pay an admitted debt or judgment, having sufficient property to discharge the same concealed or withheld, or refuses to disclose rights of action with intent to prevent their being taken by foreign attachment.

GARNISHMENT. Goods concealed in the hands of agents so that they cannot be attached, or debts due from any person may be reached by process of foreign attachment.

JUDGMENT is not a lien on lands unless attached, or unless a certificate describing the court, date of judgment, names of parties, amount unsatisfied, and the premises on which the lien is claimed is recorded in the town where the lands lie.

STAY LAW. Stay of execution can be had only on appeal, on a judgment against an executor or administrator in the settlement of an insolvent estate, in case of foreign attachment where it shall appear on *scire facias* that the debt due the principal is not yet payable, and on a judgment for a mortgagee in ejectment pending foreclosure of a mortgage.

EXEMPTIONS. The necessary apparel and bedding, household furniture necessary for supporting life (which clause is construed liberally), the arms, military equipments, uniforms, or musical instruments, owned by members of the militia, pension money received from the United States, implements of the debtor's trade, library not exceeding in value five hundred dollars, one cow not exceeding one hundred and fifty dollars in value, sheep not exceeding ten, or one hundred and fifty dollars in value, two swine, and two hundred pounds of pork, and poultry not exceeding twenty-five dollars in value. Of the property of any one having a wife or family, twenty-five bushels of charcoal, two tons of other coal, two hundred pounds of wheat flour, and two cords of wood, two tons of hay, two hundred pounds of beef and fish each, five bushels each of potatoes and turnips, ten bushels each of Indian corn and rye, or the meal and flour therefrom, twenty pounds each of wool and flax, or the yarn and cloth therefrom; the horse or bicycle of a practicing physician not exceeding two hundred dollars in value, and his saddle, bridle, harness, and buggy; one boat owned by one person and used by him in the business of planting or taking oysters or clams, or taking shad, together with the tackle, sails, rigging and implements used in said business, not exceeding in value two hundred dollars, one sewing machine, being the property of one person, one pew, and lot in a burying ground. Wages of any person, including services of minor child, not exceeding fifteen dollars, except on a claim for personal board or house rent not exceeding twenty-five dollars, all benefits from charitable associations, sick benefits allowed by associations to members, and insurance on exempt property are exempt. Homestead to the value of one thousand dollars in any dwelling owned and occupied by the claimant is exempt, provided a declaration to that effect has been executed and recorded in the same manner as a deed of land, or inserted in the conveyance to him.

DELAWARE.

ACTIONS may be commenced by a writ of *capias* or summons, or in the case of a non-resident defendant by attachment of property.

ARREST. The defendant may be arrested on *mesne* process, but, if he be a citizen of the State, only on plaintiff's filing an affidavit of fraud, except in actions for libel, slander, or injury to person or property accompanied with violence. A non-resident plaintiff cannot arrest on *mesne* process a non-resident defendant for debt contracted without the limits of the State.

The defendant can be arrested on execution only on affidavit of fraud, and when it appears by affidavit or the return on *scire facias* that he has no property in the county sufficient to pay the debt and costs.

ATTACHMENT. Writ of domestic attachment may issue after return by the officer showing that the defendant cannot be found, and proof of the cause of action, or on affidavit filed with the prothonotary that the defendant is justly indebted to the plaintiff in a sum exceeding fifty dollars, and has absconded from his usual place of abode, or gone out of the State with intent to defraud his creditors or to elude process, as it is believed. The proceeds of sale of property so attached are divided equally among defendant's creditors, except that the attaching creditors are entitled to a double share to the extent of their debt.

A writ of foreign attachment for debt, but not for damages, may issue against a person not an inhabitant of the State or foreign corporation after a return as above, on an affidavit that the defendant resides out of the State, and is justly indebted to the plaintiff in a sum exceeding fifty dollars.

GARNISHMENT. The property, rights, or credits of a defendant against whom judgment has been obtained, in the hands of a third party may be attached.

JUDGMENT of Superior Court is a lien on real estate of the defendant for ten years from the date of entering same. After twenty years it is presumed to be paid.

STAY LAW. Execution on judgments for want of affidavit of defense may be stayed six months on giving good security. In suits before a magistrate six months' stay on defendant's pleading his freehold, nine months on giving security.

Judgments obtained at second term after suit are allowed a stay of three months.

EXEMPTIONS. The family Bible, school books and family library, family pictures, a seat or pew in church, burial lot, all the wearing apparel of debtor and family, and in addition the tools, implements, and fixtures necessary for carrying on his trade or business, not exceeding seventy-five dollars in New Castle and Sussex Counties, and fifty dollars in Kent County. There is exempted to the head of the family, in addition to the above, other personal property (goods of merchantable character bought to be sold in transaction of debtor's business excepted) not exceeding two hundred dollars in New Castle County, and not exceeding one hundred and fifty dollars consisting of household goods only in Kent County. There is no such additional exemption in Sussex County, and there is no such additional exemption when such

exemption would prevent the collection of a debt due or growing due for labor or services (other than professional services) rendered by any clerk, mechanic or other employee of the debtor. Sewing machines owned and used by seamstresses or private families are also exempt.

In New Castle County 90% of all wages are exempt from attachment, except for board or lodging, or both, not exceeding \$50. Widows in all cases shall have the same exemptions out of the husband's goods that he would have if living. Funeral expenses, reasonable bills for medicine and medical attendance, nursing and necessities of last sickness are paid out of the personal property of a deceased person, before there is any application to the execution. The above exemptions extend to distress for rent. Pianos, piano playing attachments and organs leased or hired are exempt from execution or from distress for rent due from the person leasing or hiring, after notice of the lease to the landlord.

There is no homestead exemption.

DISTRICT OF COLUMBIA.

ACTIONS in the Supreme Court of the District are commenced by filing in the clerk's office a libel or information, bill, petition, or declaration, and service of writ and payment of deposit to secure costs of suit.

Plaintiff may include in his declaration all causes of action against the defendant, stating them in separate counts.

ARREST. No person can be arrested in a civil suit, or imprisoned for debt other than fines.

ATTACHMENT. Writs of attachment and garnishment may issue either at the commencement or during the pendency of the action, on plaintiff's filing an affidavit, supported by testimony of one or more witnesses, setting forth the grounds of action and that plaintiff has a good right to recover, and also stating either that defendant is a foreign corporation or a non-resident or has been absent therefrom at least six months and has estate or debts owing him in said District, or evades service of process by concealing himself or withdrawing temporarily from the District, or has removed or is about to remove some of his property from the District to defeat just demands, or has assigned, disposed of, or secreted property, or is about to do so with intent to hinder, delay, or defraud creditors, or fraudulently contracted the debt or incurred the obligation sued on. Attachment may be dissolved by defendant giving bond. The plaintiff must file an undertaking and bond.

JUDGMENT is a lien on real estate from the date of rendition and as long as the judgment remains in force.

STAY LAW. Execution is stayed only by appeal and filing a bond.

EXEMPTIONS. Wearing apparel of all persons; and to heads of families who are householders, beds, bedding, household furniture, stoves, cooking utensils, etc., not exceeding three hundred dollars in value; provisions for three months' support, whether provided or growing; fuel for three months; mechanics' tools, and implements of debtor's trade or business, amounting to two hundred dollars in value, with two hundred dollars' worth of stock for carrying on business of debtor or his family; library and implements of professional man or artist, to value of three hundred dollars; one horse, one

mule, or yoke of oxen, one cart, wagon or dray, and harness for team; farming utensils, with food for such team for three months; and if debtor be a farmer, any other farming tools to the value of one hundred dollars; all family pictures, and all family library not exceeding in value four hundred dollars; one cow, one swine, six sheep. The earnings, not exceeding one hundred dollars per month, of actual residents of the District who are married persons, or who have to provide for the support of a family in the District, for two months preceding the issuing of process are also exempt.

There is no homestead exemption.

FLORIDA.

ACTIONS at law are commenced by filing a *præcipe* with the clerk, and may be brought in the name of the real party in interest.

ARREST. There is no statute law authorizing the arrest of a defendant in a civil action.

ATTACHMENT may issue on the affidavit in writing before a justice of the peace or clerk of the circuit court, that the amount demanded is actually due, and that the plaintiff has reason to believe that the defendant will part with his property fraudulently before judgment can be obtained, or is actually moving his property out of the State, or is about to do so, or resides out of the State, or is removing or about to remove from the State, or absconds or conceals himself or his property or is fraudulently disposing of the same, or is removing or is about to remove beyond the judicial circuit in which he resides; and furnishing security for costs and damages. Writ of attachment may issue before the debt or demand is due, provided it will become due within nine months, on plaintiff's filing an affidavit that the amount claimed is actually an existing debt or demand, the amount and date when it will become due, and also that the debtor is actually removing his property beyond the limits of the State, or is fraudulently disposing of or secreting the same for the purpose of avoiding the payment of his just debts. The plaintiff must give a bond with sureties.

GARNISHMENT. Every person who has brought suit to recover a debt, or who has recovered judgment in any court of the State, may have a writ of garnishment on filing affidavit that the debt sued on is just, due and unpaid, that the writ is not sued out to injure defendant or garnishee, and that affiant does not believe that defendant, after execution, will have visible property sufficient to satisfy plaintiff's claim. Plaintiff must also file bond with two sureties in double amount of claim.

JUDGMENT is a lien on real estate, and becomes so in any county by recording it in such county before the alienation of the property. It is binding in the county in which suit was brought from the date when it was rendered. Mortgages, notices of liens, or judgments when extinguished, must be canceled by holder on the records under penalty for failure. Judgments, the records of which have been destroyed by fire, are not good against creditors and bona fide purchasers without notice unless legal proceedings to re-establish the same are begun within nine months.

Judgments of a lower court, sustained in the Supreme or Circuit Court on appeal or supersedeas, run against sureties on bond.

STAY LAW. There is no stay of execution in Florida.

EXEMPTIONS. There is exempt to the head of each family a homestead of one hundred and sixty acres, or one-half an acre in an incorporated city or town, with the improvements on such real estate, together with one thousand dollars' worth of personal property, to be selected by the debtor, but no property is exempt from sale for taxes, for obligations contracted for the purchase of the same or in making improvements thereon, or for labor performed thereon.

Money due for personal labor or services of the head of a family is exempt from attachment or garnishment.

GEORGIA.

ACTIONS. All distinctions between real, personal, and mixed actions are abolished.

ARREST. Imprisonment for debt is abolished, but in actions for the recovery of personal property, on plaintiff's making affidavit that he has reason to believe that said property has been or will be eloiigned or moved away, or will not be forthcoming to answer the judgment, defendant may be arrested and committed to jail, unless he give bond with good security, or on application to the judge states on oath that he is neither able to give the security required by law nor produce the property, and can furnish satisfactory reasons for its non-production, when he may be discharged on his own recognizance. He shall also traverse the plaintiff's statements in his affidavit.

ATTACHMENTS may issue whether the debt is due or not. 1. When the debtor resides out of the State. 2. When he is actually removing or is about to remove without the limits of the county. 3. When he absconds. 4. When he conceals himself. 5. When he resists legal arrest. 6. When he is causing his property to be removed beyond the limits of the State, when he is disposing of or threatens to dispose of or conceals his property liable to the payment of his debts, or makes a fraudulent lien thereon, to avoid payment of his debts. Plaintiff must make affidavit before a judge of the superior court, or county court, a justice of the peace, or a notary public, setting forth one of the above causes, and the amount of the debt claimed, and must give a bond to the defendant to prosecute his suit, and the defendant may dissolve the attachment by giving bond.

GARNISHMENT may issue before or after judgment against debtors of the defendant, on plaintiff's making affidavit of the amount due, and that he has reason to apprehend the loss of the same or of some part thereof unless garnishment issue, and giving bond with security for damages and costs.

JUDGMENT is a lien on all property, real or personal, except promissory notes and choses in action. All judgments draw lawful interest which is 7%. The judgment lien is discharged in four years on real property, and two years on personal property sold to a *bona fide* purchaser for a valuable consideration.

STAY LAW. If the debtor gives a bond with good security, execution may be stayed sixty days.

EXEMPTIONS. The Constitution of 1877 provides that there shall be exempt from levy and sale by virtue of any process whatever, of the property of every head of a family, or guardian or trustee of a family of minor children, or every aged or infirm person, or person having the care and support of a dependent female of any age who is not the head of a family, real or personal property, or both, to the value of sixteen hundred dollars, except that such property is liable for taxes, purchase money, labor done thereon, or materials furnished therefor, and for the expense of removing encumbrances thereon. Debtor may waive in writing the benefit of these exemptions, except as to wearing apparel and not exceeding three hundred dollars' worth of household and kitchen furniture and provisions to be selected by himself and wife.

If the debtor, being the head of a family, does not avail himself of the foregoing exemption, he may claim those allowed by prior laws, viz: fifty acres of land and five acres additional for every child under sixteen years, including the dwelling-house, if such house and improvements do not exceed in value two hundred dollars, such homestead not to be in any city, town, or village; or in lieu thereof, real estate in a city, town, or village, not exceeding five hundred dollars in value; also one farm horse or mule, one cow and calf, ten head of hogs, and fifty dollars' worth of provisions, and five dollars' worth additional for every child, beds, bedding, and common bedsteads sufficient for the family, one loom, one spinning-wheel, and two pairs of cards and one hundred pounds of lint cotton, common tools of trade of the debtor and his wife, ordinary cooking utensils and table crockery, wearing apparel of the debtor and his family, library of a professional man in actual practice not exceeding in value three hundred dollars, to be selected by the debtor. Also fifty bushels of corn, one thousand pounds of fodder, one one-horse wagon, one table, one set of chairs sufficient for the use of the family, and household and kitchen furniture, all not to exceed one hundred and fifty dollars in value. A family sewing-machine is exempt, whether the owner is the head of a family or not. Wages to the amount of \$1.25 per day and 50% of the excess above that amount are exempt from garnishment.

HAWAII.

ACTIONS. All civil actions are commenced by the filing of a verified complaint, and the issuing of a summons. The assignee of a non-negotiable chose in action may sue in his own name.

ARREST. There is no provision for arrest in civil actions.

ATTACHMENT. Attachment may issue at any time on plaintiff's filing affidavit that defendant is indebted to him, specifying the amount above all just credits, and that attachment is not sought or action prosecuted to hinder, delay or defraud any creditor of defendant, and by furnishing bond with sureties to prosecute the action without delay and pay any costs and any damages which defendant may suffer if attachment be wrongfully, oppressively or maliciously sued out.

GARNISHMENT. Goods, effects and credits in the hands of third persons may be attached in the original proceedings against the defendant or in supplemental proceedings. In case of any salary, annuity or pension payable

by garnishee the latter must retain twenty-five per cent. until suit is determined, and continue to retain twenty-five per cent. until judgment is satisfied.

JUDGMENT. Judgment of district court may be made a lien on real estate by docketing it in the office of the circuit court, and within fifteen days thereafter recording the docketed judgment in the registry of deeds.

EXEMPTIONS. One piece of land, not exceeding one acre, with dwelling and other buildings thereon, not exceeding one thousand dollars in value, when owned by a housekeeper having a family, except as against mechanics' liens. Also the following personal property: All necessary household, table, and kitchen furniture, one sewing machine, crockery, tin and plated ware, calabashes and mats, family portraits and photographs and their frames, wearing apparel, bedding, household linen, and provisions for three months. Farming instruments and utensils not exceeding five hundred dollars in value; two oxen, two horses or mules, and their harness, and food for one month; one horse, one set of single harness and one vehicle of any person who is maimed or crippled; the tools or implements of a mechanic or artisan necessary to carry on his trade; the instruments and chests of a physician, dentist, or surveyor necessary to the exercise of his profession, together with necessary office furniture and fixtures; the necessary office furniture, fixtures, blanks, stationery and office equipment of attorneys and judges, ministers of the gospel and rabbis; the typewriter, one desk and six chairs of a stenographer or typewriter; the musical instruments of every teacher of music used in giving instruction; one bicycle; the fishing nets, clips and seines, and boats with their tackle and equipment, of every fisherman; two horses or mules and their harness, one cart, wagon or stage, one dray or truck, one coupe, hack, or carriage for one or two horses, one automobile, one motorcycle or other vehicle by use of which a cartman, drayman, truckster, huckster, peddler, hackman, teamster, chauffeur, driver or other laborer earns his living; and two horses and harness and one vehicle or one automobile or motorcycle used by a physician, surgeon or minister of the gospel in the practice or exercise of his profession; the nautical instruments and wearing apparel of every master, officer or seaman of any steamship or other vessel; all books, papers, bookcases, etc., except those kept for sale; proceeds of insurance or of sale of property aforesaid; for three months after they are received; one half of wages of every wage earner; also the family Bible, pictures and school books, two swine or six goats and all necessary fish, meat, flour and vegetables.

IDAHO.

ACTIONS. There is but one form of action, which is commenced by filing a complaint and causing a summons to be issued thereon, and must generally be in the name of the real party in interest.

ARREST. Defendant may be arrested in the following cases: in an action on a contract when defendant is about to depart from the State with intent to defraud his creditors; in an action for wilful injury to person, character, or property; in an action for a fine or penalty, or on a promise to marry, or for money or property embezzled or fraudulently misapplied, or

for misconduct or neglect in office or in professional employment, or for willful violation of duty; in an action to recover possession of personal property unjustly detained, where the property has been concealed, removed, or disposed of to prevent its being found; when defendant was guilty of fraud in contracting the debt or obligation sued on, or in concealing or disposing of the property for the taking, detention, or conversion of which the action was brought, or when defendant has removed or disposed of his property or is about to do so to defraud his creditors.

Plaintiff must file affidavit showing one or more of the above causes and a bond of indemnity to the defendant.

ATTACHMENT may issue in actions on judgments, or on contracts for the express payment of money, where there is no security, or in an action of contract against a non-resident; an affidavit must be filed setting forth the amount due, and the ground of attachment, and that the attachment is not sought nor the action prosecuted to hinder, delay, or defraud creditors, and bond with two sureties must also be filed.

GARNISHMENT. On notice in writing from the plaintiff that any person has property or credits belonging to the defendant, the sheriff may attach the same by serving on such person a copy of the writ of attachment or execution, together with notice that such property or credits are attached.

JUDGMENT is a lien for two years from the time of docketing the same, on all real estate owned by the defendant in the county, and in any other county for two years after a transcript of the original docket has been filed with the recorder thereof.

STAY LAW. There is no stay of execution except in case of appeal with bond given.

EXEMPTION. Except on judgments for the purchase price: 1. Chairs, tables, desks, and books to the value of two hundred dollars. 2. Necessary household furniture to the value of three hundred dollars, pictures and drawings, family portraits and their frames, provisions for six months, two cows with their sucking calves, and two hogs with their sucking pigs. 3. Farming utensils and implements not exceeding three hundred dollars in value, four oxen or four horses or mules and their harness, one cart or wagon, and food for such oxen, horses, or mules for six months; water right not exceeding one hundred and sixty inches of water for irrigation purposes, and crops growing or grown on fifty acres of land leased, owned, or possessed by claimant. 4. Necessary tools or implements of a mechanic or artisan not exceeding five hundred dollars, notarial seal and records of a notary public, instruments and chests of a surgeon, physician, surveyor, or dentist, with their scientific and professional libraries, professional libraries and office furniture of attorneys, counsellors, and judges, and libraries of ministers of the Gospel. 5. The cabin or dwelling of a miner not exceeding five hundred dollars, also his mining tools and apparatus, and a pack-horse of prospector, of value of two hundred and fifty dollars. 6. Team, wagon or cart and harness of teamster, or other laborer, and one horse with vehicle and harness used by a physician, surgeon, or minister in making his professional visits, with food for such animals for six months. 7. The earnings of the judgment debtor for personal services rendered within thirty days of the levy

of execution, when such earnings are necessary for the support of the family and family resides in State. 8. Shares held by a member of local homestead association or building and loan association, to amount of \$1,000, if the holder is not the owner of a homestead. 9. Insurance on the life of the debtor to the extent of an annual premium not exceeding two hundred and fifty dollars. 10. Uniforms and apparatus of fire company or department. 11. Arms, uniforms, etc., required by law to be kept. 12. Public buildings, grounds, and personal property pertaining thereto. A homestead not exceeding five thousand dollars to head of family, and one thousand dollars to other persons, if declaration be acknowledged and recorded.

ILLINOIS.

ACTIONS are begun by a summons issued under the seal of the court, and are substantially in form as at common law.

ATTACHMENTS. The creditor may have an attachment against the property of the defendant when the debt exceeds twenty dollars. 1. Where the debtor is a non-resident. 2. Where the debtor conceals himself, or stands in defiance of the officer so that process cannot be served. 3 and 4. Where the debtor has departed, or is about to depart from the State with the intent to have his effects removed from the State. 5. Where the debtor is about to remove his property from the State, to the injury of creditors. 6, 7, and 8. Where the debtor has, within two years preceding the filing of the affidavit, fraudulently conveyed, concealed, or disposed of his property so as to hinder or delay his creditors, or is about to do so. 9. Where the debt sued for was fraudulently contracted, provided the statements have been reduced to writing by him or his agents. The creditor must file an affidavit with the clerk of the court, stating the nature and amount of the indebtedness, and any one of the preceding causes, and the place of residence of the defendant, if known; must give a bond to the defendant to prosecute his case and to pay costs if not successful. Officer also generally requires an indemnity bond.

ARREST. The defendant may be arrested on mesne process, in actions of contract and on judgments, on an affidavit setting forth the cause and amount due, and facts showing that the defendant fraudulently contracted the debt, or that he has concealed, assigned, or disposed of property with intent to defraud his creditors; or, in actions sounding in damages merely, the facts of the case, and that the plaintiff believes that the benefit of the judgment will be lost unless the defendant is required to give bail. Plaintiff must also give security for damages and costs.

After return of execution unsatisfied, an order of arrest may be procured on plaintiff's affidavit that demand has been made for property to satisfy execution, and that he believes that debtor has properly specified, not exempt, which he unjustly refuses to surrender, or that since debt was contracted or cause of action accrued, debtor has fraudulently conveyed, concealed, or otherwise disposed of some part of his estate to secure same to his own use, or with intent to defraud creditors, and setting forth facts on which belief is founded. The judgment is satisfied at the rate of one dollar and fifty cents per day during the debtor's imprisonment.

GARNISHMENT. On a writ of attachment, when the officer is unable to find property of the defendant, he may summon any persons designated by the plaintiff, who have property of the defendant, or who owe debts to the defendant, the same as if they were inserted in the writ. He may also summon such persons after judgment and return by the officer of "no property found," on affidavit by the plaintiff. The wages of defendant who is the head of a family, and residing with the same, to the amount of fifteen dollars per week are exempt.

JUDGMENT is a lien against real estate in the county for seven years, and bears interest at six per cent. There is no priority of lien in respect to judgments rendered at the same term of the court.

STAY LAW. There is no stay of execution in Illinois.

EXEMPTIONS. A householder having a family, is entitled to a homestead in a farm or lot of land, and the buildings occupied as a residence, to the value of one thousand dollars; of personal property, the necessary wearing apparel, Bibles, school-books, family pictures, one hundred dollars' worth of other property to be selected by the debtor, and, where the debtor is the head of a family, three hundred dollars' worth of such property. No personal property exempt from judgment for wages of laborer or servant.

INDIANA.

ACTIONS. All distinctions of actions are abolished, and there is but one form for law and equity; must be prosecuted in the name of the real party to the suit, and are begun by filing with the clerk a complaint and causing a summons to issue thereon.

ARREST. The defendant may be arrested and held to bail at any time before judgment, on an affidavit on behalf of the plaintiff, specifying his right to recover an existing debt or damages, and stating that affiant believes that the defendant is about to leave the State, taking his property with him, with intent to defraud his creditors. Plaintiff must give bond to pay to the defendant all damages if the order be wrongfully obtained.

ATTACHMENT. Plaintiff may have a writ of attachment at any time where the action is for the recovery of money, where the defendant is a foreign corporation or a non-resident of the State, or secretes himself, or is secretly leaving the State or has left it, with intent to defraud his creditors, or is removing, or about to remove, his property from the State, not leaving enough to satisfy the plaintiff's claims, or has sold, conveyed, or otherwise disposed of his property with intent to defraud or delay his creditors, or is about to do so. He must file with the clerk an affidavit showing the nature and amount of his claim, that it is just, and that he believes he ought to recover the same, and one of the grounds of attachment mentioned above, and give security to the defendant for damages and costs.

GARNISHMENT. If an affidavit is filed at any time stating that the affiant has good reason to believe that any one has property of the defendant which cannot be attached, or is indebted to him, the clerk may issue a summons to such person or persons to appear as garnishee. The garnishee may be arrested on affidavit filed, that it is believed that he is about to abscond, with intent to defraud creditors, and that he has property of the defendant.

Wages of an employee to the value of twenty-five dollars exempt so long as he remains in same employ.

JUDGMENT for the recovery of money or costs is a lien on the real estate and chattels of the defendant in the county where judgment was rendered, for ten years, and becomes such a lien in other counties at the filing therein of a certified copy. Judgments bear interest from the date of signing, at the same rate, not exceeding six per cent., as the contracts on which they were rendered.

STAY LAW. On giving bond with good surety, execution may be stayed as follows: On sums, excluding costs, not exceeding six dollars, thirty days; on all sums between six and twelve dollars, sixty days; between twelve and twenty dollars, ninety days; between twenty and forty dollars, one hundred and twenty days; between forty and one hundred dollars, one hundred and fifty days; over one hundred dollars, one hundred and eighty days.

EXEMPTIONS. An amount of property, real or personal, not exceeding six hundred dollars, is exempt for any debt growing out of or founded on contract. The debtor may select the property that he wishes to have exempt. There is no homestead exemption.

IOWA.

ACTIONS. All distinctions of forms are abolished. They must be prosecuted by and in the name of the real party in interest, except in the case of executors, administrators, guardians, and trustees, and are begun by serving the defendant with a notice that a suit will be brought on or before a certain day, and filing a petition containing a statement of the facts constituting the cause of action.

ARREST. No arrest on mesne process or final process except in case of fraud.

ATTACHMENT. There may be an attachment at any time on a sworn petition, stating, 1. That defendant is a foreign corporation. 2. Non-resident. 3. Is about to remove his property from the State without leaving sufficient for payment of debts. 4. Has disposed of his property with intent to defraud his creditors. 5. Is about to do so. 6. Has absconded, so that ordinary process cannot be served on him. 7. Is about to remove permanently from the county, and has property therein not exempt and that he refuses to pay to the creditor. 8. Is about to remove permanently from the State and refuses to pay or secure the debt. 9. Is about to remove his property out of the county with intent to defraud creditors. 10. Is about to convert his property into money with intent to place it out of reach. 11. Has property concealed. 12. That the debt is for property obtained under false pretences.

Property may be attached before debt becomes due when nothing but time is wanting to fix an absolute indebtedness, if petition, in addition to that fact, states that defendant has disposed of his property with intent to defraud creditors, or is about to do so, or that he is about to remove from the State and refuses to make any arrangements for securing the payment of the debt, which contemplated removal was not known to plaintiff at the time

when the debt was contracted, or that the debt was incurred for property obtained under false pretenses.

Plaintiff must file a bond with sureties before the issuing of the writ.

GARNISHMENT. On a writ of attachment the sheriff shall summon such persons as garnishees as plaintiff may direct, giving them written notice not to pay any debt due the defendant or thereafter to become due, and to retain any property belonging to defendant to be dealt with according to law.

JUDGMENT is a lien on real estate for ten years, in the county where it was rendered, from the date of such rendition, and in other counties from the date of filing an attested copy therein, and bears interest at six per cent., unless a different rate was expressed in the contract, in which case it shall bear such rate of interest, not exceeding eight per cent.

STAY LAW. On all judgments for the recovery of money, except those rendered on appeal or writ of error, or for money received in a fiduciary capacity, or for breach of official duty, or against the surety in a stay of execution, or judgment obtained by a laboring man or a mechanic for his wages, execution may be stayed by giving bonds with good security, as follows: on sums not exceeding one hundred dollars, three months; on sums exceeding one hundred dollars, six months. All judgments on which execution is stayed bear interest at the same rate as the judgment.

EXEMPTIONS. To a debtor, resident of the State and head of a family, the wearing apparel for himself and his family and trunks to contain the same, one musket or rifle and shot gun, private libraries and family Bibles, portraits, pictures, musical instruments, paintings, not kept for sale, seat or pew in church, and lot in burying-ground, not exceeding one acre, two cows and two calves, one horse, fifty sheep and the wool therefrom and materials manufactured from such wool, six stand of bees, five hogs and all the pigs under six months, poultry to the value of fifty dollars, the necessary food for all animals exempted, for six months, one bedstead and bedding for every two persons, cloth manufactured by the debtor not exceeding one hundred yards, household and kitchen furniture not exceeding two hundred dollars in value, spinning-wheel and looms, one sewing machine and other instruments of domestic labor kept for actual use, necessary provisions and fuel for six months, tools, instruments or books of the debtor, if a farmer, mechanic, surveyor, or professional man; horse or team consisting of not more than two horses or mules or two yoke of oxen, and wagon or other vehicle with the harness and rigging, by the use of which the debtor earns his living, and if the debtor is a printer, printing press, types, furniture, and materials necessary for his business not exceeding twelve hundred dollars in value. The earnings of the debtor if a resident and head of a family within ninety days of the levy are also exempt. If debtor is seamstress, one sewing machine. If the debtor has started to leave the State he will have exempted only the wearing apparel of himself and family and other property not exceeding seventy-five dollars in value. No exemption of goods from judgment for purchase price thereof. Policies of life, endowment, or accident insurance are exempt.

The homestead of the debtor is also exempt (except for debts prior to its purchase, unless purchased with pension money) embracing the house used

by him as a home, and if in a town plat, not exceeding one-half an acre in extent, or not exceeding forty acres if not in any town plat without limitation as to value. To an unmarried person not the head of a family or to a non-resident there is exempt ordinary wearing apparel and trunk necessary to contain the same. U. S. pension money is exempt in all cases.

KANSAS.

ACTIONS are brought in the name of the real party interested, and begun by filing with the clerk a petition, and causing a summons to issue thereon upon the filing of a bond for costs.

ARREST. Debtor may be arrested before judgment on plaintiff's giving security and filing with the clerk an affidavit, stating the nature and the amount of the claim, and that it is just, and one of the following reasons: 1. That defendant has or is about to remove his property out of the jurisdiction of the court with intent to defraud creditors. 2. That he has begun to convert his property into money for the purpose of placing it beyond the reach of his creditors. 3. That he has property fraudulently concealed. 4. That he has assigned or disposed of his property, or begun to do so, with intent to defraud his creditors. 5. That he fraudulently contracted the debt. The affidavit must also state the facts claimed to justify the belief in the above causes for arrest. Arrest may be made on similar proceedings after judgment.

ATTACHMENT. Writ of attachment may issue for one of the following causes: 1. That the defendant is a foreign corporation or non-resident (but in this case only on a demand arising upon a contract, judgment, or decree, unless the cause of action arose wholly within the limits of the State). 2. That he has absconded with intent to defraud creditors. 3. That he has left the county with intent to avoid service. 4. So conceals himself that summons cannot be served on him. 5. Is about to remove his property from the jurisdiction of the court with intent to defraud. 6. Is about to convert his property into money in order to place it beyond the reach of creditors. 7. Has property concealed. 8. Has assigned or disposed of, or is about to dispose of, property to defraud or delay his creditors. 9. That he fraudulently contracted the debt. 10. Where the damages sought to be recovered are for injuries resulting from the commission of a felony or misdemeanor or the seduction of a female. 11. Where the debtor failed to pay the price of any article delivered, when by the contract he was bound to pay for on delivery. An affidavit must be filed stating the nature and amount of the claim, and that it is a just one, and also one of the above causes, and security must be given unless the defendant is a foreign corporation or a non-resident. Where either the fifth, sixth, seventh, or eighth of the above grounds exists the action may be brought and attachment made before the maturity of the debt by special order of the court. Attachment may be dissolved by the defendant by giving bonds. The plaintiff must give security unless the defendants are non-residents.

GARNISHMENT issues on filing with the clerk an affidavit setting forth the amount of claim, that affiant believes that the person or persons named have property of the defendant, or are indebted to him, that the same is not ex-

empt and that defendant has not property liable to execution sufficient to satisfy debt, and filing bond to defendant.

JUDGMENT is a lien on real estate in the county where it was rendered from the first day of term in which it was so rendered, and in other counties from the filing therein an attested copy of the judgment, and such lien continues for five years. Judgment by confession, or those rendered at the term the action is commenced are liens only from the date of entry. Unless execution is taken out within one year the lien ceases as against any other judgment creditor.

Judgments bear interest at the rate of six per cent., or when rendered on contract the rate mentioned therein, not exceeding ten per cent.

STAY LAW. There is no stay of execution in the District Courts except on appeal. In justices' courts stay is granted on filing a bond with good security, as follows: on amounts not exceeding twenty dollars, thirty days; between twenty and fifty dollars, sixty days; between fifty and one hundred dollars, ninety days; over one hundred dollars, one hundred and twenty days.

EXEMPTIONS. A homestead of one hundred and sixty acres of farming land with the improvements, or one acre in an incorporated city or town, occupied as the residence of the debtor and his family. Personal property of a debtor who is the head of a family, consisting of, 1, family Bible, school-books, and family library; 2, family pictures, and musical instruments used; 3, seat or pew in church and lot in burying-ground; 4, wearing apparel, beds, bedding, and bedsteads used in the family, stoves and cooking utensils necessary for the use of the debtor and his family, one sewing-machine, all spinning-wheels and looms, and all other implements of industry and other household furniture not exceeding in value five hundred dollars; 5, two cows, ten hogs, one yoke of oxen, one horse or mule, or in lieu of one yoke of oxen, and one horse or mule, a span of horses or mules, twenty sheep and the wool of the same; 6, the necessary food for the support of the stock mentioned for one year, one wagon, cart, or dray, two plows, one drag, and other farm utensils, including harness for teams, not exceeding three hundred dollars in value; 7, grain, meat and other provisions necessary for one year, and fuel for one year; 8, necessary tools of mechanic, miner, or other person used for trade or business, and in addition thereto stock in trade not exceeding four hundred dollars in value; 9, library, implements, and office furniture of a professional man. If the debtor is a resident, but not the head of a family, his wearing apparel, seat or pew in church, burial lot and as above in 8 and 9. The earnings of the debtor for three months to the extent of ninety per cent. when necessary for maintenance of family.

KENTUCKY.

ACTIONS. There is only one form for civil actions, which are begun by filing with the clerk of the court a petition, and causing a summons to issue thereon. Non-resident plaintiffs must execute a bond for costs before the commencement of action.

ARREST. The defendant may be arrested and held to bail at any time before judgment, on plaintiff's filing an affidavit showing, 1, the nature of

the claim; 2, that it is just; 3, the amount; and 4, that the affiant believes either that the defendant is about to leave the State, and with intent to defraud his creditors, has concealed or removed from the State his property, so that there will not be enough left to satisfy the plaintiff's claim, or that the defendant has money or securities or evidences of debt and is about to leave the State, without leaving enough to satisfy the plaintiff's claim. Plaintiff must also give bond with sureties.

ATTACHMENT. Writ of attachment issues against the property of a defendant or garnishee, in an action for the recovery of money, in the following cases: 1. Where the defendant, or one of them, is a foreign corporation, or non-resident of the State. (but in this case only for a debt or demand arising on contract or a judgment or award). 2. Or has been absent from the State four months. 3. Has departed from the State with intent to defraud his creditors. 4. Has left his county to avoid service. 5. Conceals himself so that summons cannot be served on him. 6. Has removed or is about to remove his property from the State, not leaving enough to satisfy the plaintiff's claim or claims of creditors. 7. Has sold or disposed of, or suffered to be disposed of, his property with intent to defraud or delay his creditors. 8. Is about to sell or dispose of his property, with such intent. Attachment may issue, also, in action for recovery of money due on contract, judgment, or award if defendant have not property in the State to satisfy plaintiff's demand and collection will be endangered by delay. Also in action to recover personal property ordered to be delivered to plaintiff which has been disposed of or concealed so that order for delivery cannot be executed.

Plaintiff must give security and file an affidavit showing the nature of the claim, that it is just, the amount of the same, and one of the foregoing causes.

GARNISHMENT. On return of the execution with return of "no property found," the plaintiff may bring a suit against the defendant for discovery, and bring in any parties indebted to the defendant, or who have property of the defendant, as parties to the suit.

JUDGMENT is not a lien on defendant's property.

STAY LAW. At any time before sale on execution, defendant may replevy the judgment for three months by giving bond with surety.

EXEMPTIONS of a householder with a family resident in the State, two work beasts, or one and yoke of oxen, two plows and gear, one wagon and set of gear, or cart, or dray, two axes, three hoes, one spade, one shovel; two cows and calves; beds, bedding, and furniture sufficient for family use; one loom and spinning-wheel, and pair of cards; all the spun yarn and cloth manufactured by the family necessary for family use; carpeting for all family rooms in use; one cooking stove and all cooking utensils not exceeding twenty-five dollars in value; one table; all books not to exceed seventy-five dollars in value; two saddles and their appendages; two bridles; six chairs, or so many as shall not exceed ten dollars in value; one cradle; all poultry on hand; ten head of sheep, not to exceed twenty-five dollars in value; all wearing apparel; sufficient provisions for the family for one year, provender for live stock to the value of seventy dollars; if not on hand, other personal property not to exceed seventy dollars in value;

all washing apparatus not to exceed seventy-five dollars in value; arms, ammunition, and equipments of a militia-man; one sewing-machine; all family portraits and pictures; tools, not exceeding one hundred dollars in value, of any mechanic; libraries of ministers, professional libraries of physicians, surgeons, and attorneys, and instruments of physicians and surgeons, not exceeding five hundred dollars in value. Also dwelling-house and land, not exceeding one thousand dollars in value.

Ninety per cent. of wages or salaries of persons earning seventy-five dollars per month is exempt; also sixty-five dollars and a half per month of those of persons earning more.

LOUISIANA.

ACTIONS are begun by petition, stating all the facts necessary to the cause and identification of the parties, on which a citation issues, addressed to the defendant.

ARREST. The defendant cannot be arrested to secure payment of a debt, but only to secure his person to answer to the suit. A non-resident cannot be arrested unless it appear on oath that he has absconded from his residence in his own State.

Plaintiff must file affidavit of amount due, that he believes defendant is about to remove from the State without leaving sufficient property to satisfy his demand and that he asks this remedy, not to vex defendant but only to secure his demand. He must also give security to defendant.

ATTACHMENT. Writ of attachment issues when the defendant resides out of the State, or has left or is about to leave the State permanently; or when he conceals himself to avoid service of summons; or when he has assigned or disposed of, or is about to assign or dispose of, his property, with intent to defraud his creditors or give an unfair preference; or when he has converted, or is about to convert his property into money, with intent to conceal the same; or when he is about to remove his property from the State before the debt becomes due. The plaintiff must file a sworn petition, setting forth the facts which render the writ necessary, and the nature and amount of the claim, and give bond with surety. Writs of sequestration and provisional seizure issue in certain cases.

GARNISHMENT. In cases of attachment, or in proceedings after judgment, where the creditor believes that any other parties have property of the defendant, or are indebted to him, he may cite them in as parties.

JUDGMENT acts as a mortgage on all real estate of the debtor, from the date of the record in the office of the Parish Recorder. It is prescribed, and ceases to be a lien in ten years.

STAY LAW. There is no stay of execution in Louisiana except on appeal.

EXEMPTIONS. A homestead consisting of land with the buildings occupied by the debtor as a residence and owned by him, when he has a family dependent on him, together with a certain amount of stock; but the homestead in no case to be worth more than two thousand dollars, and no homestead is allowed if the wife, in her own right, owns property to the amount of two thousand dollars. A written declaration of homestead must be executed by the person claiming the benefit of the same, and recorded in the book of

mortgages for the parish where the homestead is situated. Also are exempt the clothes and linen of debtor or his wife, his beds, bedding, and bedsteads, or those of his family, his arms and military accoutrements, the tools, instruments, books, and sewing-machines necessary for the trade or calling by which the debtor makes a living, cooking-stoves and utensils, dining-table and chairs, dishes, knives and forks, etc., wash-tubs, smoothing-irons and ironing-furnaces, family portraits, belonging to the debtor, and musical instruments in use; income of dotal property, money due for the salary of an officer, laborer's wages, and proceeds of life, health and accident insurance.

MAINE.

ACTIONS are begun by original writ, framed to attach the goods and estate of the debtor, and for want thereof his body, or by summons with or without an order of attachment, in the county where either party lives, unless it be a real action, when it must be brought where the land lies.

ARREST. Defendant may be arrested on mesne process in an action of tort, and in an action of contract, when the debt is over ten dollars, exclusive of interest, and the debtor is about to depart permanently from the State, with his property exceeding the amount required for immediate support, on affidavit by the creditor or his agent to the above effect. He may also be arrested on execution in actions for torts but not in actions founded on contract unless in special proceedings for disclosure he fails to appear for examination, or to obtain the benefit of disclosure proceedings by reason of fraud.

ATTACHMENT. All property not exempt may be attached without affidavit, bond, or order of court, and it continues under lien for thirty days after judgment.

GARNISHMENT in this State is called **TRUSTEE PROCESS**. Personal actions, except detinue, replevin, malicious prosecution, slander, libel, and assault and battery, may be begun by such process, when the trustee has any property or effects of the defendant, or is indebted to him, but the wages of the defendant, for the month proceeding not exceeding twenty dollars, are exempt, except for necessities, and ten dollars in all cases.

JUDGMENT. There is no lien of judgment, its place being supplied by the lien of attachment.

EXEMPTIONS. The homestead of a householder to the value of five hundred dollars, provided a certificate has been filed in the registry of deeds, and one cemetery lot. Of personal property, the debtor's wearing apparel, necessary household furniture not exceeding in value one hundred dollars, one bed, bedstead and bedding for every two persons, family portraits, Bibles and school-books, a copy of the State Statutes, and library not exceeding one hundred and fifty dollars in value, a pew in a meeting-house, one cooking-stove, and iron stoves used for heating, charcoal, five tons of anthracite coal, fifty bushels of bituminous coal, twelve cords of wood, ten dollars' worth of lumber, wood, or bark, produce of farm until harvested, one barrel of flour, thirty bushels of corn and grain, potatoes for debtor and family, flax raised on half an acre of ground, and articles manufactured therefrom for the family, tools of trade, fifty dollars in material and stock, sewing-machine, one pair of working cattle, or pair of mules, or one or two horses,

not exceeding in value three hundred dollars, and hay for the winter, one harness worth twenty dollars for each horse or mule, a horse-sled or ox-sled, two swine, one cow and heifer, or two cows if no oxen, horse or mule, ten sheep, and the lambs and wool from them and hay for the winter; fifty dollars' worth of domestic fowls; a plow, cart, harrow, and yoke, two chains, a mowing machine, and one boat of two tons, employed in fishing; and life and accident insurance policies, except excess of annual cash premiums for two years above one hundred and fifty dollars, and two shares in loan and building associations.

MARYLAND.

ACTIONS are begun as at common law, and the common law forms of actions remain as simplified by the Code of Procedure.

ARREST for debt is abolished.

ATTACHMENT may issue where the defendant is a non-resident, or where he absconds, on affidavit that the debt is a *bona fide* one, and that defendant is a non-resident or has absconded, together with the evidences of the debt. It may also issue on an original process based on an account, note, bond, or other evidence of debt, on an affidavit that the defendant is really indebted, and is about to leave the State, or that he has, or is about to assign or dispose of his property with intent to defraud his creditors, or that he fraudulently contracted the debt for which the action is brought, or that the defendant has, or is about to, remove his property out of the State with intent to defraud his creditors. Attachment may issue where two summons have been returned "*non est*," on proof by the plaintiff of his claim by affidavit and the production, if any, of written evidence of the debt; also against non-resident or absconding debtors in case of actions for false imprisonment or illegal arrest, for the amount of damages claimed. The salary of a public officer, or employee of a municipal corporation, funds in hands of government due its agents, or property or funds in custody of the law or under control of court cannot be attached. Wages and salary not due at the time of attachment, cannot be attached, and one hundred dollars is exempt out of what is due. The plaintiff must give security.

GARNISHMENT may be issued against property of the defendant in the hands of any person by attachment. (*See* ATTACHMENT.)

JUDGMENT is a lien on real estate of the defendant acquired after judgment as well as what was owned by him at the date of rendition, and becomes a lien in other counties by transferring it to such counties; bears interest at six per cent. Judgments remain a lien for twelve years.

STAY LAWS. On all judgments rendered by the circuit courts for the counties the second term after the defendant has been summoned, he is entitled to stay of execution until the first Thursday of the following term. But judgments rendered by the law courts of Baltimore city are not subject to stay.

Judgments may be stayed by *supersedeas* for six months, sureties being given for the amount.

EXEMPTIONS. Wearing apparel, books, and tools used for trade or earnings of living, and, except under executions upon judgments for seduction or breach of promise to marry, one hundred dollars' worth of other property,

selected by the debtor, and money payable in the nature of insurance for sickness, accident, death, etc. A chose in action, or any intangible property, real or personal, except stocks, or equitable interests in personal property, cannot be taken in execution. There is no homestead exemption.

MASSACHUSETTS.

ACTIONS are begun by original writ, framed to attach the goods or estate of the defendant, or for want thereof, to take his body, or by summons, with or without an order of attachment, in either case accompanied by a separate summons to be served on the defendant, and may be brought in the county where either party lives unless it is to recover real estate, when it must be brought where the land lies, or in trustee process when it must be brought in the county of the trustee.

ARREST. Defendant may be arrested on mesne process on the plaintiff making affidavit and proving to the satisfaction of the court to which the writ is returnable: 1. That one of the parties resides or has a usual place of business in the State, and, except in actions on negotiable instruments, that the plaintiff is an original party to the cause of action, or his executor or administrator. 2. That he has a good cause of action and reasonable expectation of recovering twenty dollars exclusive of any costs of a former action in an action of contract, or one third at least of the damages claimed in an action of tort. 3. That he believes and has reason to believe that defendant intends to leave the State, so that execution, if obtained, could not be served upon him. 4. That he does not know of any property within the State which can be reached by attachment, or otherwise, sufficient to satisfy any judgment he may recover. 5. That he believes and has reason to believe that defendant has property not exempt from being taken on execution which he does not intend to apply to payment of plaintiff's claim; or instead of 3, 4 and 5, that defendant is an attorney-at-law or engaged in the business of collecting money, and that the debt is for money collected which defendant unreasonably neglects to pay. No arrest on mesne process is allowed in action for libel or slander. Defendant may be arrested on execution, in an action of tort, without an affidavit, and in an action of contract, where the damages, exclusive of costs, amount to twenty dollars or more on affidavit (1) that the debtor has property not exempt which he does not intend to apply to the payment of the debt; (2) that since the debt was contracted or the cause of action accrued, the debtor has fraudulently conveyed or concealed his property with a design to secure the same to his own use or to defraud creditors; (3) that since the debt was contracted, or cause of action accrued, the debtor has lost one hundred dollars or more in illegal gambling; (4) that since the debt was contracted the debtor has willfully misspent his property so as to be able to swear that he has no property not exempt; (5) that the debtor contracted the debt with an intention not to pay it; (6) that the debtor is an attorney-at-law, and neglects unreasonably to pay money collected by him for the creditor.

On application based upon any of these grounds, unless it appears that the debtor is about to leave the State the magistrate must first issue an order of notice to the debtor to appear and submit to examination touching his es-

tate. If on such examination it appears that he has property not exempt he will be required to assign the same for the benefit of the creditor.

If he fails to appear or obey any lawful order of the magistrate his arrest on the execution will be authorized.

ATTACHMENT. All goods and estate, real and personal, may be attached without any affidavit, and the attachment continues as a lien for thirty days after judgment. Attachments may be dissolved by the defendant, by giving bond to pay all damages recovered with costs, or to pay the appraised value of the property released.

GARNISHMENT, called TRUSTEE PROCESS. All actions except replevin, tort for malicious prosecution, libel and slander, and assault and battery, may be begun by trustee process; and any one, including a corporation, who is indebted to the defendant, or who has property of the defendant, except non-residents and foreign corporations having no place of business in the State, may be summoned.

Assignments of future wages must be in standard form, signed by assignor personally, stating dates, value of consideration and rate of interest. Valid only to secure existing debt, and for term of one year. Must have wife's written consent. If for less than three hundred dollars must be accepted in writing by employer, and, with acceptance, recorded with clerk of town or city where assignor lives, or if a non-resident, where he is employed. Assignment must state on its face that three fourths of assignor's wages are exempt from assignment.

JUDGMENT is not a lien (*see* ATTACHMENT), but bears interest from the date of rendition, at six per cent. There is no stay of execution.

EXEMPTIONS. The homestead of a householder having a family, to the value of eight hundred dollars in the farm or lot of land and buildings owned and occupied by him as a residence, provided the design to hold it as such has been duly recorded. Necessary wearing apparel for the family, one bedstead and bedding for every two persons, one iron stove used for warming the dwelling-house, and fuel for the same not exceeding twenty dollars in value, other necessary household furniture not exceeding three hundred dollars in value; Bibles, school-books, and library used by himself or family, not exceeding fifty dollars in value; one cow, six sheep, one swine, and two tons of hay; tools, implements, and fixtures necessary for business or trade, not exceeding in value one hundred dollars; materials and stock designed and necessary for his trade or business, not exceeding one hundred dollars in value; provisions necessary and procured for debtor and his family, not exceeding fifty dollars in value; one pew in church; the boats, tackle, and nets of fishermen actually used by them for their business, to the value of one hundred dollars; the uniform, arms, and accoutrements of a militia man; rights of burial and tombs; one sewing-machine not exceeding one hundred dollars in value, and shares in certain coöperative associations not exceeding twenty dollars in value. Wages to the amount of twenty dollars, unless the debt was incurred for necessities, and then ten dollars, are also exempt.

MICHIGAN.

ACTIONS are substantially the same as at common law, and are begun by original writ. The assignee of any bond, note, or other chose in action may sue in his own name.

ARREST. Personal actions on contract may be begun by a writ of *capias ad respondendum*, only to recover damages for breach of promise, or for money collected by a public officer, or for misconduct or neglect in office, or in any professional employment, or fraud or breach of trust, on affidavit on behalf of the plaintiff, stating that he has good cause of action, and believes that he is entitled to recover more than one hundred dollars. Personal actions may also be begun by *capias* in cases of claims for damages other than those arising on contract, where an order for bail is indorsed on the writ by a judge of the court from which the process issues, or a circuit court commissioner.

ATTACHMENT. The creditor may proceed at any time before judgment by attachment, on giving bond and filing an affidavit stating the indebtedness, the amount of which must exceed one hundred dollars, and that it is due on a contract, together with one of the following causes: 1. That the defendant has absconded; or is about to abscond, or is concealed, to the injury of his creditors. 2. That defendant has assigned, concealed, or disposed of, or is about to assign or dispose of his property with intent to defraud his creditors. 3. That the defendant has or is about to remove his property from the State, with intent to defraud his creditors. 4. That the defendant fraudulently contracted the debt. 5. That he is a non-resident, and has been so for three months previous to making the affidavit. 6. That it is a foreign corporation. Attachment is a lien on real estate from the date of depositing a certified copy in the registry of deeds for the county where the land lies. Attachment by order of court may issue on either of the grounds specified in subdivisions 1 and 2 before debt is due, in which case the affidavit must show when it will be due and the reasons for the application. The plaintiff must give an undertaking with sureties.

GARNISHMENT. In all actions in justices' courts or circuit courts, at the commencement of the suit, or at any time, the plaintiff may have a writ of garnishment on filing with the clerk an affidavit that he believes that any person (naming him) has property, effects, or credits of the defendant, or is indebted to him, and that he is in danger of losing the same unless garnishment issues.

JUDGMENT bears interest at the rate of five per cent., unless it is on a written instrument embodying a different rate, in which case such rate is followed not exceeding seven per cent. Judgment becomes a lien on real property from the levy of execution, and from the time of filing a notice of such levy, containing the names of the parties, description, and date of the levy, in the office of the registry of deeds for the county where the land lies.

STAY LAWS. Defendant may have a stay of execution in justices' courts within five days after the justice is authorized to issue execution, by filing a bond with good surety, as follows: for four months after commencement of suit where the execution does not exceed fifty dollars, and six months where it does exceed fifty dollars.

EXEMPTIONS. 1. Spinning-wheels, weaving looms, and stoves put up and kept for use. 2. Seat or pew in church. 3. Cemeteries, tombs, and rights of burial while in use. 4. Arms and accoutrements required by law, and all wearing apparel. 5. Library and school-books of each member of the family, not exceeding in value one hundred and fifty dollars, and family pictures. 6. To every householder, ten sheep and fleeces (or the yarn or cloth from the same), two cows, five swine, and the provisions and fuel for the comfort of the family for six months. 7. To a householder, all household goods, furniture and utensils, not exceeding in value two hundred and fifty dollars. 8. Tools, implements, materials, stock, apparatus, team, vehicles, horses, harness or other things which enable a person to carry on the business in which he is engaged, not exceeding in value two hundred and fifty dollars. 9. Sufficient grain, hay, feed, and roots, whether growing or otherwise, for keeping all animals exempt for six months. 10. Sewing-machine. Also a homestead of forty acres, and the dwelling-house and appurtenances not in a city, or village, or instead, one lot in a city or village, and the dwelling-house thereon, owned and occupied as a residence, not exceeding in either case fifteen hundred dollars in value.

Only household goods, library, pictures, rights in cemeteries, one cow, and provisions and fuel for one month, not exceeding five hundred dollars in value, are exempt from execution on judgments for labor.

MINNESOTA.

ACTIONS. All distinctions are abolished, and there is but one form of action, which is begun by filing complaint and issuing summons to defendant, and must be prosecuted by the real party in interest.

ATTACHMENTS may be had at any time in actions for the recovery of money, except for libel, slander, seduction, breach of promise, false imprisonment, malicious prosecution and assault and battery, and are sued out on affidavit specifying the cause and amount and grounds for the action, and that the defendant is a foreign corporation, or a non-resident, or has departed from the State with intent to defraud or delay creditors, or to avoid the service of the summons, or that defendant keeps himself secreted with like intent, or has assigned, secreted, or disposed of his property, or is about to do so, with intent to defraud his creditors, or that the debt was fraudulently contracted. Plaintiff must also give security for costs and damages.

ARREST for debt is abolished.

GARNISHMENT is allowed in actions on contracts, on filing an affidavit at any time before or after judgment, stating that it is believed that any person (naming him) has property of the defendant, or is indebted to him in a sum exceeding twenty-five dollars if the action is in a court of record, or ten dollars in a justices' court.

JUDGMENT is a lien, in the county where the cause was tried, from docketing the same, and in other counties from the date of filing a transcript in the office of the District Court, and continues a lien for ten years.

STAY LAWS. Stay of execution may be had in justices' courts for a period from one to six months, in addition to ten days allowed for appeal, the time varying according to the amount of the judgment. Debtor must file a bond,

with surety, conditioned to pay amount of judgment with six per cent. interest. In district courts, on judgments for recovery of money, stay may be had for six months on giving security for payment of judgment with interest at eight per cent.

EXEMPTIONS. 1. Family Bible. 2. Family pictures, school-books, or library, and musical instruments for use of family. 3. Seat or pew in church. 4. Lot in burying-ground. 5. Wearing apparel, beds, bedsteads, and bedding kept and used in the family, stoves and appendages, and cooking utensils, and all other household furniture not enumerated, and not exceeding five hundred dollars in value. 6. Three cows, ten swine, one yoke of oxen, and one horse, or, in lieu of oxen and horse, a span of horses or mules, twenty sheep and the wool therefrom, either raw or manufactured, food for the stock for one year, one wagon, cart, or dray, one sleigh, two plows, one drag and other farm utensils, not exceeding three hundred dollars in value. 7. Watch, sewing-machine, bicycle, and type-writer. 8. Grain for one year's seed, not exceeding one hundred bushels wheat, one hundred bushels oats, one hundred bushels barley, one hundred bushels potatoes, ten bushels corn and binding material used in harvesting crop. 9. Provisions and fuel for debtor and his family for one year. 10. Tools and instruments of mechanic, miner, or other person, used in carrying on his trade, and in addition, stock-in-trade, not exceeding four hundred dollars in value, and library and implements of a professional man. Also the wages of any resident laboring man or woman, or their minor children, not exceeding thirty-five dollars, for thirty days preceding the service of process. The presses, type, and other implements used in the printing or publication of a newspaper, not exceeding two thousand dollars in value, and stock-in-trade not exceeding four hundred dollars, are also exempt. Also a homestead of eighty acres, and the dwelling-house and appurtenances, not in an incorporated city, town or village, or in lieu thereof, one lot in an incorporated city, town, or village having over 5,000 inhabitants, or one-half an acre of land in a city, town, or village having less than 5,000 inhabitants, with the house thereon. By statute of 1906 as to debts contracted after March 1, 1906, homesteads within an incorporated city, village, or borough of 5,000 or more shall not exceed one quarter of an acre. Money received from insurance on life of deceased husband or father not exceeding ten thousand dollars is exempt.

MISSISSIPPI.

ACTIONS are begun by filing a declaration and issuing summons, and the forms of actions and modes of proceeding are substantially as at common law. Security for costs may be required before the commencement of actions by non-residents or insolvents.

ATTACHMENT. Remedy by attachment applies to all liquidated debts, and to all claims for damages for breach of contract, and process issues on an affidavit filed by the creditor or his agent, stating the nature and amount of the claim, and one or more of the following causes: 1. That defendant is a foreign corporation, or non-resident. 2. That he has removed, or is about to remove, himself or property out of the State. 3. Or so absconds or conceals himself that service cannot be made on him. 4. That he contracted

the debt or incurred the obligation in conducting the business of a ship, steamboat, or other water craft in some of the navigable waters of the State. 5. Or that he has property which he conceals, and refuses to apply to the payment of his debts. 6. Or that he has assigned or disposed of, or is about to assign or dispose of, his property with intent to defraud creditors. 7. Or that he has or is about to convert his property into money in order to place it beyond the reach of his creditors. 8. Or that he fraudulently contracted the debt. 9. Or that within six months he has dealt in "futures." 10. Or that he is a public defaulter. 11. Or that he is a banker and has received deposits knowing himself to be insolvent, or has published false and fraudulent statements as to his financial condition.

Attachment may issue for a debt not due if sued on either of the last six grounds if the creditor affirm that he has just cause to suspect and verily believes that the debtor will remove himself or his effects out of the State before said debt will become payable, with intent to hinder, delay, or defraud his creditors, or that he has removed with like intent, leaving property in the State.

Plaintiff must also give security for damages and costs.

ARREST. There is no arrest for debt.

GARNISHMENT. If any third person has any property, effects, or credits of the defendant, or is indebted to him, he may be summoned as garnishee.

JUDGMENT. Judgment is a lien on all property in the county where rendered, from the date of rendition, if enrolled, and in other counties from the date of enrolling the same in the office of the clerk of the court for such county. The time of limitations for judgments is seven years.

STAY LAWS. Stay of execution is allowed in justices' courts on giving bond with surety as follows: On sums not exceeding fifty dollars, thirty days; on sums over fifty dollars, sixty days.

EXEMPTIONS. 1. Tools of a mechanic necessary for his trade. 2. Agricultural implements of a farmer necessary for two male laborers. 3. Implements of a laborer necessary for his usual employment. 4. Books of student for educational purposes. 5. Wearing apparel. 6. Library of all persons not exceeding five hundred dollars in value, and instruments of a surgeon or dentist to value of two hundred and fifty dollars. 7. Arms and accoutrements of militia men. 8. Globes, books, and maps of a teacher. And also of the property of each head of a family, one yoke of oxen and two work horses or mules, two cows and calves, twenty hogs, twenty sheep, colts under three years old, poultry, two hundred and fifty bushels of corn, five hundred bundles of fodder, one thousand pounds of hay, ten bushels of wheat or rice, five hundred pounds of pork or other meat, one cart or wagon and harness, one sewing machine, and household and kitchen furniture not exceeding two hundred dollars in value, one saddle, bridle and side saddle, one hundred bushels of cotton seed, forty gallons of molasses or syrup, and one thousand stalks of sugar cane, molasses mill and equipments not exceeding one hundred and fifty dollars, mower, rake, family portraits, wages to amount of fifty dollars per month, and proceeds of judgment for personal injuries not exceeding \$10,000. For residents in cities, towns, and villages, personal property in lieu of foregoing not exceeding two hundred and fifty dol-

lars, also to every householder having a family, a homestead not exceeding one hundred and sixty acres in extent, or three thousand dollars in value.

MISSOURI.

ACTIONS are begun first, by filing with the clerk a petition setting forth the cause of action, and the remedy sought, and the voluntary appearance of the other party, or second, by filing such petition, and suing out thereon a summons against the person, or an attachment against property. Non-residents must give security for costs.

ARREST. There is none for debt.

ATTACHMENT may be had, 1. Where the defendant is a non-resident. 2. Where the defendant is a foreign corporation. 3. Where the defendant conceals himself so that service cannot be had on him. 4. Where he has absconded or absented himself so that summons cannot be served on him. 5. Where defendant is about to remove his property from the State with intent to defraud, hinder, or delay his creditors. 6. Where defendant is about to remove out of the State with intent to change his domicile. 7. Where defendant has fraudulently conveyed his property so as to hinder or delay his creditors. 8. Where defendant has fraudulently concealed, removed, or disposed of his property with a like intent. 9, 10. Where he is about to fraudulently convey or conceal his property with like intent. 11. Where cause of action accrued out of the State, and the defendant has absconded, or removed his property to this State. 12. Where the damages sought are for injuries arising from commission of a felony or misdemeanor, or the seduction of a female. 13. Where the defendant has failed to pay the price of an article delivered, which by contract he was bound to pay for on delivery. 14. Where the debt was fraudulently contracted. Plaintiff must file an affidavit stating the nature and amount of his claim, and his belief that one or more of the above causes are true, and give bond for damages and costs. Attachments may be had for a debt not yet due on any of the grounds above specified, except the first four.

GARNISHMENT. The writ of attachment may be served on any one having property of, or who is indebted to the defendant, or who may be named by the plaintiff as a garnishee. The same may be done on execution, where insufficient property of the defendant is found to satisfy the claim.

JUDGMENT is a lien from the date of its rendition in the county where rendered, and becomes a lien on real estate in any other county by filing a transcript in the office of the clerk of the circuit court for such county, and it extends to real estate acquired after the rendition or filing of transcript, as well as to what was owned at the time, and it continues for three years. Judgments bear interest at six per cent., unless another rate was expressed in the contract, in which case such rate is taken, not exceeding eight per cent. There is no stay of execution except on appeal.

EXEMPTIONS. To every head of a family, 1. Ten head of choice hogs, ten head of choice sheep, and produce in wool, yarn or cloth, two cows and calves, two plows, one axe, one hoe, one set of plow gears, and all necessary farming implements for one man. 2. Two working animals and feed to the value of twenty-five dollars. 3. Spinning-wheels and cards, one loom and

appliances for manufacturing cloth in and for the private family. 4. Spun yarn, cloth, and thread manufactured for family use. 5. Hemp, flax, and wool, not exceeding twenty-five pounds each. 6. Wearing apparel, four beds and bedding, and other household and kitchen furniture, not exceeding in value one hundred dollars. 7. Necessary tools and implements of trade of a mechanic. 8. Arms and accoutrements of a militia man. 9. Provisions for the family, not exceeding one hundred dollars in value. 10. Bibles and other books, lettered gravestones, and pew in church. 11. Lawyers, physicians, and clergymen may select necessary books in place of other property exempt, and doctors may select medicines. The head of a family may select, in lieu of the property mentioned in the above first two subdivisions, other property, real or personal, not exceeding in value three hundred dollars.

Every housekeeper or head of a family is also entitled to hold exempt from execution the homestead occupied by him, not exceeding in extent eighteen square rods, or in value three thousand dollars, in cities of over forty thousand inhabitants; and not exceeding in extent thirty square rods, or in value fifteen hundred dollars, in cities having less than forty thousand and more than ten thousand inhabitants; and five acres in extent, and fifteen hundred dollars in value, in cities having less than ten thousand inhabitants; and not exceeding one hundred and sixty acres, and fifteen hundred dollars in value, in the country.

To a person not the head of a family there is exempt his wearing apparel, and if a mechanic, the necessary tools and implements of his trade.

MONTANA.

ACTIONS. There is but one form of civil action, which is commenced by the filing of a complaint and the issuance of a summons, and must be in the name of the real party in interest.

ARREST may be had on filing affidavit and bond in cases of fraud, or when defendant is about to leave the State with intent to defraud creditors, or when the action is for willful injury to person, character, or property; also in an action for fine or penalty, or for money or property embezzled or fraudulently misapplied by a public officer, officer of a corporation, attorney, or other person acting in a fiduciary capacity; or where defendant has removed, concealed, or disposed of his property, or is about to do so, with intent to defraud creditors.

ATTACHMENT. All property not exempt from execution may be attached on filing a sufficient bond, and an affidavit showing that defendant is indebted to plaintiff upon a contract, express or implied, for the payment of money, unsecured by pledge or mortgage, or the security on which has become insufficient.

Attachment may be made before the demand is due, if the defendant is leaving or about to leave the State with all his property which might be subjected to the payment of the debt, for the purpose of defrauding his creditors; or is disposing of or about to dispose of his property subject to execution, for the same purpose. This must be shown by affidavit.

GARNISHMENT. Personal property or credits in the possession or under the control of another may be attached by serving on such person a copy of the writ and notice that the property or credits are attached.

JUDGMENTS are liens on real estate of the debtor then owned or afterwards acquired, in the county where the judgment is entered, for six years from the time of docketing the same. A similar lien may be acquired on lands in any other county by filing a certified transcript of the docket with the recorder.

STAY LAW. There is no statutory enactment on the subject but stay is granted by the courts upon proper showing and upon appeal.

EXEMPTIONS. Married persons or heads of families have exempt all clothing of the debtor and family, and chairs, tables, desks, and books to the value of two hundred dollars; also all necessary household furniture, and provisions and fuel for three months; one sewing-machine, clock, and family pictures; also one horse, saddle and bridle, two cows with their calves, four swine and fifty domestic fowl, with feed for them for three months. In addition to the above, there is exempt to a farmer his farming utensils not exceeding six hundred dollars in value, two oxen, or two horses or mules and their harness, one cart or wagon, and food for such stock for three months, two hundred dollars' worth of seeds, grain, or vegetables actually provided for the purpose of sowing or planting. The proper tools, instruments, or books of any mechanic, physician, dentist, lawyer, or clergyman, and office furniture. To a miner, his dwelling, and all his tools and machinery necessary for carrying on his avocation, not to exceed in value the aggregate sum of one thousand dollars, and one horse or mule and its harness, with food for three months, in case such stock is used in working the mine. One horse or mule, or two oxen, vehicle and harness, by which the debtor habitually earns his living, and one horse, with vehicle and harness, of physician or clergyman used in making professional visits, with food for such stock for three months. All arms, uniform, etc., required by law to be kept by any person. The wages of the debtor earned within the forty-five days preceding the levy, if necessary for the use of his family supported wholly or partly by his labor, but where debt is for necessities, only half is exempt. Unmarried persons have only wearing apparel exempt. None but *bona fide* residents can claim the benefit of this law. A homestead, not to exceed in value twenty-five hundred dollars; if agricultural land, not to exceed one hundred and sixty acres; if within a town, city or village, not to exceed one-fourth of an acre.

NEBRASKA.

There is but one form for all civil actions, which must be prosecuted by the real party in interest, and which are begun by filing a petition with the clerk of the court, and causing a summons to issue thereon.

ARREST—abolished in civil actions.

ATTACHMENT may issue in actions for the recovery of money on filing with the clerk an affidavit stating the nature and amount of the claim, that it is just, and one of the following grounds: 1. The defendant is a foreign corporation, or non-resident. 2. That he has absconded with intent to defraud creditors. 3. That he has left the county of his residence to avoid service of the summons. 4. That he so conceals himself that service cannot be made

upon him. 5. That he is about to remove his property beyond the jurisdiction of the court with intent to defraud. 6. That he is about to convert his property into money to place it beyond the reach of creditors. 7. That he has property concealed. 8. That he has removed or disposed of his property, or is about to do so, with intent to defraud. 9. That he fraudulently contracted the debt.

A bond is also required, unless the defendant is a non-resident.

GARNISHMENT. In cases of attachment, if the plaintiff makes an affidavit, that he believes that any person or corporation named, and within the county, has property of the defendant (describing it), the said property, whether debts, choses in action, or other property, may be garnisheed, and the garnishee summoned to appear in court and answer in relation thereto. Also on return of an execution, unsatisfied, the judgment creditor may have a writ of garnishment.

JUDGMENT in the district court is lien on lands within the county where it was rendered, from the first day of the term at which judgment is rendered (except judgments by confession and those rendered at same term that action was commenced, which are liens from the date of rendition), and in other counties from the filing a transcript with the clerk of the court, and the lien continues for five years. Judgments of justices' and county courts are liens from the date of docketing a transcript thereof in the office of the clerk of the district court. Interest on all decrees or judgments for the payment of money, shall be from the rendition thereof, at the rate of seven per cent. till paid, unless the contract on which the judgment was entered specified a different rate, then at such rate, not to exceed ten per cent.

STAY LAWS. In district courts judgments for fifty dollars and under, three months, between fifty and one hundred dollars six months, over one hundred dollars nine months.

In justices' courts, judgments for ten dollars and under, sixty days, between ten and fifty dollars ninety days, between fifty and one hundred dollars six months, between one hundred and two hundred dollars nine months.

In county courts judgments for sums under two hundred dollars on the same terms as in the justices' courts, over two hundred dollars same as in district courts.

Bond with sureties is required.

No stay is allowed on judgments rendered on appeal or for money received in an official or fiduciary capacity.

EXEMPTIONS. Homestead not exceeding two thousand dollars in value, consisting of dwelling-house and one hundred and sixty acres not in an incorporated city or village, or two contiguous lots on a recorded plot in a city, town or village. If debtor has no lands, personal property to the value of five hundred dollars is exempt. Of personal property: 1. Family Bible. 2. Family pictures, school-books, and library for use in the family. 3. Seats or pew in church. 4. Lot in burying-ground. 5. Necessary wearing apparel, beds, bedding, and bedsteads necessary for the family, all stoves and apparatus, not exceeding four, cooking utensils and other household furniture not enumerated, not exceeding one hundred dollars in value. 6. One cow, three hogs, and all pigs under six months, and if the debtor be actually en-

gaged in agriculture, one yoke of oxen, or in lieu thereof, one pair of horses, ten sheep and the wool therefrom, manufactured or not, necessary food for stock for three months, one wagon, cart, or dray, two plows, and one drag, necessary gear, and farming implements not exceeding fifty dollars in value. 7. Provisions and fuel for six months. 8. Tools, instruments of a mechanic or miner or other person, used for carrying on his trade or business, library and implements of a professional man, head of a family, and wages of laborers, mechanics, and clerks, heads of families, for sixty days. Pension money of U. S. soldiers and sailors and property purchased or improved therewith.

NEVADA.

ACTIONS. There is only one form of action, which is prosecuted by the real party in interest, and is begun by filing a complaint with the clerk, and issuing a summons thereon. The defendant may appear voluntarily, when he waives notice of the summons.

ARREST. Defendant may be arrested and held to bail, 1. In an action for the recovery of money or damages in an action on contract, where he is about to leave the State with intent to defraud his creditors, or where the action is for libel or slander. 2. In an action for a fine or penalty, or for embezzlement, or fraudulent misappropriation of money by a public officer of a corporation, or an attorney, agent, broker, etc., or any other person in a fiduciary capacity, or misconduct in office or professional employment. 3. In an action to recover property unjustly detained, where the property has been removed or concealed. 4. Where the defendant fraudulently contracted the debt. 5. Where the defendant has or is about to dispose of his property fraudulently. Plaintiff must make affidavit of one of the above grounds, and give security for damages and costs.

ATTACHMENT may be had at any time—1. In an action of contract for the direct payment of money made or payable in Nevada, and not secured, or the security for which has become worthless by act of defendant. 2. In an action of contract against a non-resident. 3. In an action by resident for recovery of value of property converted by defendant. 4. Where defendant has absconded or is about to do so to defraud creditors. 5. Where he conceals himself to avoid service of summons. 6. When he is about to remove property beyond jurisdiction of court with intent to defraud. 7. When he is about to convert property into money to place it beyond reach of creditors. 8. When he has removed or disposed of property to defraud creditors. 9. When he fraudulently or criminally contracted the debt. Plaintiff must file an affidavit with the clerk of the court, stating nature and amount of his claim and one of the grounds mentioned, and give security to defendant.

GARNISHMENT. Debts and credits of the defendant in the hands of third parties may be attached on original process.

JUDGMENT is a lien in the county where it was rendered from the time of docketing, and in other counties from the date of filing a transcript; the lien continues for two years. The legal rate of interest on judgments is seven

per cent. but parties may stipulate for any rate by contract which is followed in the judgment.

There is no stay of execution except on appeal and filing a bond.

EXEMPTIONS. 1. Chairs, tables, desks, and books to the value of one hundred dollars. 2. Necessary household furniture, wearing apparel, provisions and fire-wood for one month. 3. Farm utensils, also two oxen, or horses, or mules and their harnesses, two cows, one cart or wagon, and food for stock for one month, seed grain, or vegetables for planting or sowing within six months, to the value of two hundred dollars. 4. Tools and implements of mechanic or artisan necessary to his trade, and instruments and chests of a surgeon, physician, surveyor, or dentist, necessary for their profession, with their scientific or professional libraries, and library of an attorney or clergyman. 5. Cabin of a miner not exceeding five hundred dollars in value, also all mining apparatus and tools to the value of five hundred dollars, and two horses, mules, or oxen, and their harness necessary for working his mine, and food for stock for one month. 6. Two oxen, horses, or mules, and their harness, and cart by which a carter, or teamster, etc., earns his living, one horse, vehicle, and harness necessary for a physician or clergyman, and food for one month. 7. Sewing-machine in actual use. 8. Arms and accoutrements of a militia man. 9. For livery stable keeper, two horses with vehicles and harness, not exceeding five hundred dollars in value. 10. Earnings of debtor not exceeding fifty dollars if necessary for family. 11. A homestead not exceeding in value five thousand dollars.

NEW HAMPSHIRE.

ACTIONS are begun by writ of summons, attachment, or *capias*, trustee process, or replevin. Security for costs must be given by non-residents by having the summons endorsed by a responsible person.

ATTACHMENT. All property not exempt from being taken on execution may be attached, of right, without an affidavit, and the lien continues for thirty days after judgment.

ARREST. The defendant may be arrested on an action of contract if the debt or damage, exclusive of all costs, amounts to thirteen dollars and thirty-three cents, on an affidavit indorsed on the back of the writ or execution that the affiant believes that the defendant is justly indebted to the plaintiff, and that he conceals his property so that no attachment can be made, or that he has good reason to believe that defendant is going to leave the State to avoid payment of his debts. No sheriff, or voter on election day, is liable to arrest, nor any woman in action founded upon contract, nor upon a conditional sale of clothing.

GARNISHMENT, called TRUSTEE PROCESS. All actions except replevin, trespass to the person and defamation and malicious prosecution, may be begun by trustee process. It is in the form of an attachment and summons, and the names of other parties may be inserted in the writ as trustees, at any time before service on the defendant.

JUDGMENT is not a lien. (*See ATTACHMENT.*) There is no stay or execution except by special order of the court.

EXEMPTIONS. Necessary wearing apparel, beds, bedding, and bedsteads for the debtor and his family, household furniture to the value of one hundred dollars, one cooking-stove and its furniture, one sewing-machine, Bibles, school-books, and library to the value of two hundred dollars; one cow, six sheep and their fleeces; one hog, one pig, and the pork of the same when slaughtered; tools of his occupation not exceeding one hundred dollars in value; provisions and fuel to the value of fifty dollars; uniform and accoutrements of a militia man; pew in a church; a lot in a burying-ground; beasts of the plow not exceeding one yoke of oxen or a horse, and hay not exceeding four tons; domestic fowls not exceeding in value fifty dollars. Also a homestead of the head of a family not exceeding in value five hundred dollars, or of an unmarried person owning the same.

NEW JERSEY.

ACTIONS under the provisions of the common law, as modified by statute, are begun by writs of summons, *capias*, or warrant attachment, etc.

ARREST. A writ of *capias* issues on an affidavit, specifying the nature and particulars of the debt, and one or more of the following causes: 1. That the defendant is about to remove any property out of the jurisdiction of the court with intent to defraud creditors. 2. That the defendant has property or rights which he fraudulently conceals. 3. That he has, or is about to assign, remove, or dispose of his property with intent to defraud his creditors. 4. Or that the debt was fraudulently contracted. No woman can be arrested on civil process, nor can a voter be arrested on election day.

ATTACHMENT. A writ may issue on affidavit on behalf of the creditor that the defendant has absconded, and is not, to his belief, a resident of the State, or against a defendant living out of the State.

GARNISHMENT is allowed.

JUDGMENT is a lien on real estate from the entry of judgment and remains a lien for the period of limitation, twenty years, and bears interest at six per cent.

STAY LAWS. Stay of execution is allowed only in justices' courts where defendant appears on the day judgment is given and gives a bond with surety,—on sums not exceeding fifteen dollars, one month; between fifteen and sixty dollars, three months; and over sixty dollars, six months.

EXEMPTIONS. Goods and chattels, shares of stock in any corporation and personal property of every kind to the value of two hundred dollars (exclusive of wearing apparel), and wearing apparel, of the debtor having a family. Also the lot and building owned and occupied by the debtor, if he is head of a family, to the value of one thousand dollars, provided the necessary steps required by statute to secure the same have been taken.

NEW MEXICO.

ACTIONS at law are commenced by filing a declaration and service of summons; the subsequent proceedings are substantially the same as at common law.

ARREST not allowed except in cases of fraud and personal injuries.

ATTACHMENT may issue if the demand amounts to fifty dollars in the following cases: 1. When the debtor is a non-resident. 2. Or has concealed

himself, or absconded, or absented himself from his usual place of abode in the State, so that ordinary process of law cannot be served upon him. 3. Or is about to remove his property from the State, or has fraudulently concealed or disposed of the same, so as to hinder, delay, or defraud his creditors. 4. Or is about to fraudulently convey or assign, conceal or dispose of his property, to hinder, delay, or defraud his creditors. 5. When the debt was contracted out of the State and the debtor has absconded or secretly removed his property or effects into the State with like intent. 6. When the defendant is a corporation whose principal office or place of business is out of the State, unless it has a designated agent within the State, on whom service of process may be made. 7. When defendant has fraudulently contracted the debt, incurred the obligation, or obtained credit from the plaintiff by false pretenses. Attachment may issue on a claim not yet matured.

Plaintiff must file an affidavit setting forth that defendant is justly indebted to him after allowing all just off-sets, and one of the above causes of attachment, and give security for costs and damages.

GARNISHMENT. Any person having property or credits of the defendant in his possession may be garnished if he is indebted to the defendant and has money credits or property belonging to him in his possession.

JUDGMENTS of the district courts for the counties of Santa Fé, San Miguel, Bernalillo, and Dona Ana, Chaves, Otero and Socorro, are liens on real estate from date of rendition, if within sixty days transcript of the docket of such judgment be filed in the office of the recorder of the county in which the real estate is situated. In all other counties and on judgments of the Supreme Court, from the date of the filing of such transcript.

STAY LAW. There is no stay or execution except in case of appeal.

EXEMPTIONS. Real estate to the value of one thousand dollars, in favor of heads of families actually residing on the same; also the wearing apparel, beds, and bedding necessary for the use of the family, one cook stove and one stove to warm the dwelling, with pipe, and fuel for sixty days, one cow, two swine, and six sheep and food for them for sixty days, or in lieu of each, specified amount of household furniture, all Bibles, hymn-books, Testaments, school-books used by the family, and pictures; provisions to the amount of fifty dollars, and household and kitchen furniture to the value of two hundred dollars, to be selected by the debtor. Also all tools and implements belonging to the debtor necessary to enable him to carry on his trade or business, whether agricultural or mechanical, to be selected by him, and not to exceed one hundred and fifty dollars in value; one sewing-machine, one knitting-machine, and one gun or pistol; specimens and cabinets of natural history or science not exhibited for gain. Every drayman or other carrier shall hold in addition one horse, harness, dray or wagon, and every head of family engaged in agriculture two horses, or one yoke of oxen, with gearing, and one wagon; every physician, head of a family, one horse, saddle and bridle, and books, medicines, and instruments, not exceeding one hundred dollars in value; every unmarried woman, wearing apparel not exceeding one hundred and fifty dollars in value, one sewing-machine and one

knitting-machine, and if engaged in teaching music, one piano or organ, a Bible, hymn-book, psalm-book, album, and other books, not exceeding fifty dollars in value; every lawyer, head of a family, professional library, not exceeding five hundred dollars. Only 20% earnings of debtor for 30 days subject to garnishment, except for debts for necessities of life, or when debtor is not head of a family, or family do not reside in State. If wages exceed \$75 per month excess not exempt.

Head of a family, not owner of a homestead, may hold real or personal property, in addition to the above, to amount of five hundred dollars.

NEW YORK.

There is but one form of action, which is regulated by the code of civil procedure. It is begun by the service of a summons, specifying the names of all parties, on the defendant personally, if within the State. The action must be prosecuted in the name of the real party in interest.

ARREST. The defendant may be arrested on mesne process. 1. To recover a fine or penalty. 2. Or damages for a personal injury or an injury to property, including the taking, detaining, or conversion of the same, breach of promise to marry, misconduct or negligence in an official or professional employment, fraud, and deceit. 3. To recover property owned or held by the State or some department thereof, which defendant has wrongfully obtained, or to recover damages therefor. 4. To recover a chattel, concealed or disposed of in order to prevent the plaintiff from obtaining the same. 5. To recover on a contract other than a promise of marriage, when the defendant has been guilty of fraud in contracting the debt, or has, or is about to dispose of his property with intent to defraud his creditors. 6. To recover for money or property embezzled or fraudulently misapplied by a public officer or other person acting in a fiduciary capacity. 7. An order of arrest may also be granted against a non-resident or a resident about to depart from the State in an action wherein the judgment demanded requires the performance of some act the failure to perform which would be a contempt of court. A woman can be arrested only in the case last mentioned, or in an action for wilful injury to person, character, or property. The plaintiff must give security.

ATTACHMENT may issue where the complaint demands judgment for a sum of money only, as damages for one of the following causes: 1. For breach of contract other than a promise to marry. 2. For wrongful conversion of personal property. 3. For any other injury to personal property in consequence of fraud, negligence, or other misconduct. On an affidavit showing sufficient cause as above, and that defendant is a foreign corporation or non-resident, or that he has departed from the State with intent to defraud creditors, or to avoid service, or keeps himself concealed with like intent, or has or is about to dispose of his property with intent to defraud creditors or that he made a false statement in writing of his financial condition to procure credit, or, if defendant is domestic corporation, that no person can be found on whom summons can be served. Plaintiff must give security.

JUDGMENT for an amount exceeding twenty-five dollars is a lien on the real estate of defendant from the time of docketing in the county where the

land is situated, and remains a lien for ten years. There is no stay of execution except in cases of appeal or by order of court.

EXEMPTIONS. Of a householder: 1. Spinning-wheels, weaving-loom, and stoves put up and for use in the dwelling-house, and one sewing-machine and appurtenances. 2. Family Bible, family pictures, school-books, and other books not exceeding fifty dollars in value. 3. Seat or pew in church. 4. Ten sheep and their fleeces, and yarn or cloth manufactured therefrom, one cow, two swine, necessary food for animals and for the household, and fuel, oil, and candles for sixty days. 5. Wearing apparel, beds, bedding and bedsteads necessary for the family, necessary cooking utensils, one table, six chairs, certain table utensils, crane and appendages, andirons, coal-scuttle, shovel, tongs, lamp, and candlestick. 6. Tools and implements of a mechanic necessary for carrying on his trade not exceeding twenty-five dollars in value. In addition, when debtor is a householder, or has a family for whom he provides, necessary household furniture, working tools and team, professional instruments, furniture and library, not exceeding two hundred and fifty dollars in value, together with necessary food for the team for ninety days, and groceries for family use, are exempt except in actions for wages by domestic servants or for purchase money of some article exempt. Earnings of debtor for sixty days when necessary for support of family, but ten per cent. may be reached in certain cases. Shares in credit unions to six hundred dollars. Burying-ground not exceeding a quarter of an acre. Homestead of a householder, having a family, owned and occupied by him to the value of one thousand dollars, provided it is recorded as homestead property in the office of the clerk of the county where it is situated, but it is not exempt in suits for taxes, purchase money, or debts contracted before record.

NORTH CAROLINA.

ACTIONS. The distinctions between law and equity and the forms of actions are abolished, and there is but one form of action, which is begun by issuing a summons from the clerk of the court, and which is prosecuted in the name of the real party in interest, except in case of executors, etc.

ARREST. Defendant may be arrested and held to bail, where he is a non-resident or is about to remove from the State. 1. In an action for damages not on contract, or for injury to person or character, or for injuring, taking, detaining, or converting of property. 2. In an action for a fine or penalty, or for seduction, or for money received or property embezzled, or fraudulently misappropriated by a public officer, attorney, solicitor, officer of a corporation, factor, agent, or broker, or for misconduct or negligence in office or professional employment. 3. In an action to recover personal property unjustly detained and concealed so that the sheriff cannot find it. 4. Where the debt was fraudulently contracted, or where defendant fraudulently conceals or disposes of the property for which action is brought, or when the action is for damages for fraud or deceit. 5. Where defendant has removed or disposed of his property, or is about to do so, with intent to defraud creditors. Plaintiff must make affidavit of the cause of action, and showing one of the above grounds, and give security to defendant. No

woman can be arrested except for wilful injury to person, character, or property.

ATTACHMENT is allowed at the time of issuing summons, or at any time thereafter, in an action for the recovery of money only, or for damages for breach of contract, conversion of personal property, or, injury to the person or to real or personal property through negligence or other wrongful act, against a foreign corporation or a non-resident, or against a defendant absconding or concealing himself, or who is about to remove his property from the State, or who has assigned, secreted, or disposed of his property or is about to do so, with intent to defraud creditors, on an affidavit specifying the cause of action, the amount, grounds, and one of the above reasons, and giving security for damages and costs.

GARNISHMENT. Garnishment is allowable by original attachment, and service of summonses on the persons supposed to be indebted to the defendant.

JUDGMENT is a lien on real estate in every county from the time of docketing or filing a transcript thereof in such county, and remains a lien for ten years; it bears interest at six per cent.

STAY LAWS. Stay of execution is allowed on judgments in justices' courts as follows: On sums not exceeding twenty-five dollars, one month; between twenty-five and fifty dollars, three months; between fifty and one hundred dollars, four months; over one hundred dollars, six months. Defendant must give bond with surety.

EXEMPTIONS. Homestead occupied by the debtor to the value of one thousand dollars; also personal property, to be selected by the debtor, to the value of five hundred dollars except on claims for purchase price of homestead.

NORTH DAKOTA.

ACTIONS are commenced by service of summons, and must be prosecuted by the real party in interest.

ARREST. Defendant may be arrested: 1. In an action for recovery of damages for injury to person, or character, or for injuring or wrongfully taking, detaining or converting property. 2. In action for money or property embezzled or fraudulently misapplied by a public officer, officer of a corporation, or attorney, agent or other person in fiduciary capacity. 3. In action to recover possession of personal property concealed or disposed of so as to prevent its being found and taken by sheriff. 4. When defendant has been guilty of fraud in contracting debt or in concealing or disposing of property sued for, or in action for damages for fraud or deceit. 5. When defendant has removed or disposed of property, or is about to do so, to defraud creditors.

Plaintiff must file affidavit setting forth ground of application and give security. No female can be arrested except for wilful injury to person, character, or property. Imprisonment for debt is abolished.

ATTACHMENT. Property of defendant may be attached in action on contract or judgment for recovery of money only, or for conversion of personal property, or for damages whether arising out of contract or otherwise. 1.

When defendant is a non-resident or foreign corporation. 2. When he has absconded or conceals himself. 3. When he has or is about to remove property from the State, not leaving enough for payment of his debts. 4. Where he has disposed of his property or is about to do so to defraud creditors, or hinder or delay them. 5. Where he is about to remove his residence from the county without giving security on demand for the debt sued on. 6. When debt was incurred for property obtained under false pretenses. 7. When defendant is about to remove property from the State to defraud creditors. 8. Goods may be attached on suit to recover the purchase price. The plaintiff must give security for the costs and damages.

GARNISHMENT. On filing affidavit that third person has property of the defendant or is indebted to him, such property or debts may be garnished.

JUDGMENT is a lien on defendant's real estate in every county where it is docketed, for ten years from the time of docketing in the county where rendered.

EXEMPTION. A homestead not exceeding in value five thousand dollars, and if in town plot not exceeding two acres, provided claimant be the head of a family. All family pictures, pew, burial lot, family Bible, and school books, family library not exceeding in value one hundred dollars, wearing apparel of debtor and family, provisions and fuel for one year, and other personal property to be selected by the debtor not exceeding in value five hundred dollars.

Instead of the five hundred dollars exemption debtor may select the following: books and musical instruments for family use not exceeding in value five hundred dollars, household and kitchen furniture used by debtor and family, not exceeding five hundred dollars, three cows, ten swine, one yoke of cattle and two horses or mules, or two yoke of cattle or two pair of horses or mules, one hundred sheep and their lambs under six months old, and all wool of same and cloth or yarn made therefrom, food for animals for one year, one wagon, one sleigh, two plows, one harrow, and farming tools and tackle not exceeding three hundred dollars; the tools and implements of a mechanic used for the purpose of his business, and stock in trade not exceeding two hundred dollars; library and instruments of a professional man not exceeding in value six hundred dollars.

OHIO.

ACTIONS. All distinctions are abolished; must be prosecuted in the name of the real party in interest, except in case of executors, etc., and are begun by filing with the clerk of the court a petition and a precipe, stating the names of the parties and demanding a summons thereon.

ARREST. Defendant may be arrested on affidavit made before any judge, clerk of the court, or justice of the peace, stating the nature and amount of the claim, that it is just, and one of the following grounds: 1. That the defendant has removed or is about to remove, his property out of the jurisdiction of the court with intent to defraud creditors. 2. That he has begun to convert his property into money with intent to place it beyond the reach of his creditors. 3. That he has property or rights that he fraudulently conceals. 4. That he has assigned, removed, or disposed of his property, or

has begun to do so, with intent to defraud creditors. 5. That the debt was fraudulently contracted. 6. That the money or thing for which recovery is sought was lost by gaming or by a wager. The affidavit must also state the facts claimed to justify belief in the ground alleged, and the order may issue at any time before judgment. Plaintiff must also give security for damages. Defendant may also be arrested on any judgment for payment of money on grounds substantially the same as above, and also when he was arrested before judgment and has not been discharged as an insolvent debtor.

Females are privileged from arrest on all process, meane or final, for any debt or demand founded on contract, and sundry other persons, officials and others, are exempt on certain occasions.

ATTACHMENT is granted in civil action for recovery of money on an affidavit stating the nature, amount, and justice of the cause, and one of the following causes: 1. That the defendant is a foreign corporation or a non-resident. 2. Or has absconded with intent to defraud creditors. 3. Has left the county of his residence to avoid service of the summons. 4. So conceals himself that service cannot be had on him. 5. Is about to remove his property beyond the jurisdiction of the court, to defraud his creditors. 6. Is about to convert his property into money to place it beyond the reach of his creditors. 7. That he has property or rights of action which he conceals. 8. Has assigned or removed, or is about to assign or remove his property with intent to defraud creditors. 9. That the debt was fraudulently or criminally contracted. 10. That the claim is for work or labor or for necessities. But attachment is not to issue on the ground that the defendant is a foreign corporation or non-resident, for any claim other than a debt or demand arising on a contract, judgment, or decree, or for causing death by a negligent or wrongful act. Security must be given unless defendant is a foreign corporation or non-resident. Attachment may be granted in certain cases before debt is due.

GARNISHMENT. If the plaintiff, or some one on his behalf, shall make oath in writing that any person or corporation named has any property of the defendant (describing it), such person or corporation may be summoned as garnishee.

JUDGMENT is a lien on real estate within the county where rendered, from the first day of the term, except judgments by confession, and those rendered at term when action is commenced, which bind from the date when they are rendered; in other counties from date of filing transcript. Lien continues for five years, but execution must issue on the judgment within one year, or the lien is lost, as against any other judgment creditor. Judgment bears interest at the same rate as the contract on which it was rendered.

STAY LAWS. Stay of execution is allowed only in justices' courts on giving bond with surety within ten days after judgment was given, as follows: On sums not exceeding five dollars, sixty days; between five and twenty dollars, ninety days; between twenty and fifty dollars, one hundred and fifty days; of fifty dollars and over, two hundred and forty days.

EXEMPTIONS. The homestead of the head of a family to the value of one thousand dollars, or if he does not own any homestead, he may select personal or real property to the value of five hundred dollars in addition to the

amount of personal property otherwise exempt, viz: 1. Wearing apparel, beds, bedding, and bedsteads necessary for the family, one cooking-stove, and one stove used for warming, and fuel for sixty days. 2. One cow, or, if the debtor has no cow, household furniture to the value of thirty-five dollars, two swine or their pork, or, in lieu thereof, household property to the value of fifteen dollars, six sheep and the wool and cloth therefrom, or household furniture to the value of fifteen dollars, and food for such animals, if any, for sixty days. 3. Bible, hymn-books, psalm books, testaments, and school-books, and family pictures. 4. Provisions actually provided to the value of fifty dollars, and other articles of household and kitchen furniture to the value of fifty dollars. 5. One sewing-machine, one knitting-machine, tools and implements for trade not exceeding one hundred dollars in value. 6. Personal earnings of the debtor or his minor children for three months on an affidavit that it is necessary for the support of the family, but in action for necessities only ninety per cent. is exempt. 7. All articles, specimens, and cabinets of natural history or science, unless the same are used for a show or for making money.

In addition to the above, to a head of a family who is a drayman, one horse, harness, and dray; or who is engaged in agriculture, one horse or yoke of cattle, the necessary gear, and one wagon; or, if a person practicing medicine, one horse, saddle and bridle, and books, medicines, and instruments not exceeding in value one hundred dollars.

Of the property of an unmarried woman—wearing apparel to the value of one hundred dollars, sewing-machine, knitting-machine, Bible, hymn-book, psalm book, and other books to the value of twenty-five dollars.

OKLAHOMA.

There is no distinction between law and equity, and but one form of civil action, which is begun by filing a petition with the clerk, and the summons being issued thereupon.

ARREST is not allowed in civil actions.

ATTACHMENT may be granted in civil action for recovery of money on executing and filing a bond to the defendant and filing affidavit showing nature and amount of plaintiff's claim, and that it is just, and one of the following grounds: 1. That the defendant is a foreign corporation or non-resident. 2. Has absconded with intent to defraud creditors. 3. Has left county of residence to avoid service of summons. 4. Conceals himself so that summons cannot be served on him. 5. Is about to remove property beyond jurisdiction of court to defraud creditors. 6. Is about to convert property into money to place it beyond reach of creditors. 7. Has property or rights of action concealed. 8. Has assigned, removed, or disposed of property, or is about to do so to defraud creditors. 9. Fraudulently contracted debt sued on. 10. That damages sought are for injuries resulting from commission of felony, misdemeanor, or seduction. 11. Or for price of article agreed to be paid for on delivery.

Attachment may be made before debt is due when defendant has been guilty of fraud.

GARNISHMENT. May issue on affidavit stating amount of claim, that plaintiff believes that garnishee has property of defendant in his possession not exempt from execution, or is indebted to him, and that defendant has not property sufficient to satisfy plaintiff's claim.

JUDGMENTS are liens on debtor's lands in the county where rendered from first day of the term when rendered, and in other counties from date of filing transcript, and continue in force five years.

STAY LAWS. Stay of execution on judgments by justices of the peace: between twenty and thirty dollars, thirty days; between thirty and fifty dollars, sixty days; between fifty and one hundred dollars, ninety days.

EXEMPTIONS. To head of family, a homestead of not exceeding one hundred and sixty acres with improvements; or, in a city, a lot not exceeding one acre with improvements, but not exceeding five thousand dollars in value if more than a quarter of an acre; all household furniture; cemetery lot; farming implements used on farm; tools, books or apparatus used in any trade or profession; family library, family portraits, pictures, and wearing apparel; five milch cows and their calves; one yoke of oxen with yokes and chains; two horses or mules and one wagon, cart, or dray; one carriage or buggy; one gun; ten hogs; twenty sheep; saddles, bridles, and harness; all provisions and forage for home consumption and use of exempt stock for one year; seventy-five per cent. of current wages or earnings for personal or professional services earned within ninety days. To a person not head of a family, cemetery lot, wearing apparel, tools, apparatus, or books belonging to trade or profession, one horse, bridle, and saddle, or one yoke of oxen, and seventy-five per cent. of current wages for personal services. All pension money is exempt. Also the library and office equipment of ministers of the gospel.

OREGON.

ACTIONS. All distinctions are abolished; there is but one form, which is prosecuted in the name of the real party in interest, except in case of executors, administrators, etc., and which is begun by filing a complaint with the clerk of the court, and causing at any time a summons to issue thereon to be served on the defendant.

ARREST. Defendant may be arrested at any time before judgment, on filing an affidavit with the clerk of the court. 1. In an action for the recovery of money, or damages on a contract when the defendant is a non-resident, or is about to remove from the state, or when the action is for injuries to person or character, or injuries to, or wrongful taking, detaining, or converting of property. 2. In an action for a fine or penalty, or on a promise to marry, or for money received, or property embezzled or fraudulently misappropriated, or converted by a public officer or attorney, or officer of a corporation, as such, or by a factor, agent, or broker, or for misconduct or neglect in office, or in professional employment. 3. In an action to recover possession of personal property detained, when it is concealed so that it cannot be found by the officer, with intent to deprive the plaintiff of the use thereof. 4. Where defendant was guilty of fraud in contracting debt or in concealing or disposing of property for which action is brought. 5. Where

defendant has removed, or disposed of his property, or is about to do so, with intent to defraud creditors. No arrest of females except for injury to person, character, or property.

ATTACHMENT. Defendant's property may be attached at the time of issuing the summons, or at any time thereafter, on plaintiff's filing a bond and an affidavit showing, 1, that defendant is indebted to him upon a contract for the direct payment of money, specifying the amount due above all legal set-offs; 2, that the payment has not been secured by mortgage, or that, if so secured security has been rendered nugatory by act of defendant, etc., or that defendant is a non-resident; and 3, that the sum claimed is a *bona fide* debt, and that attachment is not sought and action prosecuted to hinder, delay, or defraud creditors. The plaintiff must give security for the costs and damages.

GARNISHMENT is allowed on original process by attachment; there is no distinctive process.

JUDGMENT is a lien on real estate in the county where it was rendered, from the date of docketing, and in other counties from the filing a transcript in such county, and continues as such for ten years, and bears interest at six per cent. unless a different rate was contracted for, when such rate is taken, not exceeding ten per cent.

STAY. There is no stay of execution in Orgeon, except on appeal and filing a bond.

EXEMPTIONS. 1. Books, pictures, and musical instruments to the value of seventy-five dollars. 2. Necessary wearing apparel of the debtor to the value of one hundred dollars, and, if a householder, clothing for each member of the family to the value of fifty dollars. 3. Tools, implements, apparatus, team, vehicle, harness, or library necessary for the trade, occupation, or profession of the debtor to the value of four hundred dollars, and sufficient food for the team for sixty days. 4. Of property of a householder, ten sheep and one year's fleece, or the yarn or the cloth thereof, two cows, five swine; household goods, furniture, and utensils to the value of three hundred dollars; food for animals for three months, and for the family for six months; three cords of wood or one ton of coal; domestic fowls to value of \$50, and a seat or pew in church. For each white male citizen above the age of sixteen, one gun and one revolver. Homestead not exceeding \$3,000, nor 160 acres, or one block in a city, the actual abode of and owned by a family or some member thereof, is exempt. Also earnings for preceding month to extent of seventy-five dollars if needed for family; but when debt is for family expenses incurred within six months only fifty per cent. of such earnings is exempt.

PENNSYLVANIA.

ACTIONS. Personal actions, except in some special cases, are begun by a summons; there are practically only two classes of action, assumpsit and trespass.

ARREST. A writ of *capias* may issue in actions of tort. No person can be arrested in an action to recover money due on a judgment or a contract, or for damages for the non-performance of a contract, except in proceedings,

as for contempt, to enforce civil process, in actions for fines or penalties, for breach of promise of marriage, for money collected by a public officer, or for misconduct or neglect in office or professional employment. But after bringing suit, before or after judgment, defendant may be arrested, on affidavit that he is about to remove his property beyond the jurisdiction of the court to defraud creditors, or has done so, or that he has property fraudulently concealed, or rights of action or interest in public or corporate stocks, which he refuses to apply to the payment of his debts, or that he fraudulently contracted the debt. In these cases affidavit must be made of the necessary facts.

ATTACHMENT. Property of the defendant may be attached, if the plaintiff makes affidavit that the defendant is justly indebted to him in a sum exceeding one hundred dollars, stating the nature and amount of the claim, and that defendant is about to remove his property out of the jurisdiction of the court, with intent to defraud creditors, or that he has property or rights that he fraudulently conceals, or that he has assigned, disposed of, or concealed his property, or is about to do so, with intent to defraud creditors, or that he fraudulently contracted the debt. The property of non-residents may be attached without affidavit, except in actions *ex delicto*. Plaintiff must give security.

GARNISHMENT. Attachment may issue after judgment, on the property or debts due the defendant in the hands of third parties, and garnishee may be summoned in.

JUDGMENT bears interest at six per cent., and is a lien on real estate in the county where rendered. It may be transferred to other counties and continues a lien for five years, but after that may be revived by *scire facias*.

STAY LAWS. Stay of execution is allowed on judgments in actions of contract, by giving bond with surety, or offering sufficient unincumbered real estate, as follows: On sums not exceeding two hundred dollars, six months; between two hundred and five hundred dollars, nine months; over five hundred dollars, one year. In justices' courts, as follows: On sums not exceeding twenty dollars, three months; between twenty and sixty dollars, six months; over sixty dollars, nine months. There is no stay on judgments for one hundred dollars or less, for wages of manual labor.

EXEMPTIONS. Property, real or personal, to the value of three hundred dollars, exclusive of wearing apparel of the defendant and his family, and all Bibles and school-books in use in the family, and sewing-machine. There is no exemption in judgment for wages of manual labor for one hundred dollars or less, or for board for four weeks or less. There is no homestead exemption.

THE PHILIPPINES.

ACTIONS. All actions must be prosecuted in the name of the real party in interest, and are commenced by filing a complaint setting forth the grounds of action, on which the clerk of court issues a summons to the defendant.

ARREST. Defendant may be arrested in an action for recovery of money or damages on cause of action arising on contract express or implied: 1. When defendant is about to depart from the Philippines with intent to de-

fraud creditors; 2. In action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, officer of a corporation, attorney, factor, agent or clerk, or by any other person in a fiduciary capacity, or for wilful violation of duty; 3. In action to recover possession of personal property concealed, removed or disposed of to prevent its being taken by officer; 4. When defendant has been guilty of fraud in contracting the debt or obligation sued on; 5. When defendant has disposed of his property or is about to do so to defraud creditors.

Plaintiff must furnish security for payment of damages and costs.

ATTACHMENT. May be obtained: 1. In all cases mentioned above as grounds for arrest, but plaintiff must elect between arrest and attachment; 2. In action against a non-resident defendant.

GARNISHMENT. Real estate standing in the name of another, and goods, debts or credits in hands of a third party may be reached by service of order of attachment as above.

JUDGMENTS. Are not liens on real estate.

EXEMPTIONS. 1. The debtors' homestead in which he resides, and land necessarily used in connection therewith, not exceeding in value one hundred and fifty pesos. 2. Tools, and implements necessarily used in his trade or employment. 3. Two horses or two cows, or two carabaos, or other beasts of burden such as the debtor may select, not exceeding in value one hundred and fifty pesos and necessarily used by him in his ordinary occupation. 4. His necessary clothing, and that of his family. 5. Household furniture and utensils necessary for housekeeping, such as debtor may select, not exceeding in value seventy-five pesos. 6. Provisions actually provided for three months. 7. Professional libraries of lawyers, judges, clergymen, doctors, school teachers and music teachers, not exceeding in value five hundred pesos. 8. One fishing boat and net not exceeding in value twenty-five pesos of any fisherman. 9. Lettered gravestones.

PORTO RICO.

ACTIONS. There is only one form of civil action, which is brought in the name of the real party in interest and is commenced by filing a written complaint, on which summons is issued.

ARREST. May be made at any time before judgment in an action for the recovery of money or damages: 1. In an action on contract when defendant is about to leave Porto Rico to defraud creditors; or in action for damages for wilful injury to person, character or property; 2. In action to recover property embezzled or misappropriated, by a judge, officer of a corporation, attorney, broker, agent, clerk, or other person in a fiduciary capacity; 3. In action to recover personal property unjustly detained which has been sold or removed to prevent its being found; 4. When the obligation was incurred by fraud; 5. Where defendant is about to dispose of property to defraud creditors, fraudulently declaring himself to be insolvent. Plaintiff must file affidavit and give security for costs and damages. There is no imprisonment for debt.

ATTACHMENT. May be obtained in any action for fulfilment of an obligation, including contracts, damages, claims for negligence, etc. Plaintiff must

file petition setting forth grounds of action, and, unless obligation has been confessed by defendant in writing in some judicial proceeding, he must also give security for costs and damages.

GARNISHMENT. Property of defendant in the hands of third persons may be reached on attachment proceedings as above.

JUDGMENT. Is not a lien upon real estate. It must be satisfied first from personal property, and, if that is insufficient, then from real estate. Third persons may be summoned and examined as to property of defendant in their hands.

EXEMPTIONS. For every householder having a family, a homestead estate in a farm, plantation, or lot and building to the value of five hundred dollars, occupied by him as a residence. The following are also exempt: Furniture and books to the extent of one hundred dollars, necessary house, table and kitchen furniture, including sewing-machine, stove, furniture, beds, etc., not exceeding two hundred dollars, wearing apparel, hanging pictures, oil paintings and drawings drawn or painted by any member of the family, family portraits, one cow with her calf, one hog with her sucking pigs, farm utensils not exceeding one hundred dollars, two oxen, two horses, or two mules, with their harness, with food for such animals for a month. Also water rights not to exceed the amount of water used for the irrigation of lands actually under cultivation and grain and vegetables actually reserved for planting within the next six months not exceeding two hundred dollars, tools of mechanics, etc., not to exceed three hundred dollars, instruments of a physician, surveyor, or dentist, with their professional libraries, the professional libraries of attorneys, judges, and ministers. For a miner, his dwelling, not exceeding value of two hundred dollars, with sluices and machinery not to exceed two hundred dollars, one saddle animal and one pack animal, not to exceed in value one hundred dollars. For a cartman, drayman, hackman, teamster, or laborer, two oxen, two horses, or two mules, and their harness, one cart or truck, etc. For a physician, surgeon or minister one horse with vehicle and harness and fodder for one month. Earnings of a judgment debtor for thirty days when necessary for use of family. Insurance on life or debtor to amount of fifty dollars annual premium.

RHODE ISLAND.

ACTIONS are begun by original writ of summons, arrest, or attachment. The common law, as modified by statute, prevails.

ARREST. Writ of arrest may issue in action for any cause except recovery of debt or taxes. 1. To recover debts contracted before July 1, 1870. 2. In any action of contract on affidavit annexed to the writ, that the claim is just and that the plaintiff expects to recover enough to give the court jurisdiction; and also, either that defendant is about to leave the State without leaving sufficient property to be taken on execution, or that the defendant committed actual fraud in contracting the debt or in concealing or disposing of his property. Plaintiff, after commencement of the action, may sue out the writ to arrest at any time before judgment, by making a similar affidavit, and arrest on execution may be ordered by court on the same grounds.

No bond is required. No female can be arrested in action of contract, nor any voter on election day, or the day preceding or following.

ATTACHMENT. Writ of attachment issues against property of the defendant and personal property in the hands of third parties, as trustees, on an affidavit by the plaintiff, his agent or attorney, endorsed on or annexed to the writ that plaintiff had a just claim against defendant that is due, upon which plaintiff expects to recover a sum sufficient to give jurisdiction to the court, and upon giving a bond to the officer if required.

GARNISHMENT issues by original writ of attachment against personal property of the defendant in the hands of a third party. (*See ATTACHMENT.*)

JUDGMENT is not a lien on real estate. It bears interest at six per cent. There is no stay of execution, except for cause shown.

EXEMPTIONS. 1. Wearing apparel of the defendant, and his family if he has one. 2. Working tools of the debtor necessary to his occupation to the value of two hundred dollars, and library of professional man. 3. Household furniture and stores of a housekeeper, not exceeding three hundred dollars. 4. Bible, school and other books in use in his family, not exceeding three hundred dollars in value. 5. One cow, and one and a half tons of hay, of a housekeeper. 6. One hog, one pig, and the pork of the same, of a housekeeper. 7. Uniform and accoutrements of a militia man. 8. Pew in church. 9. Lot in burying-ground. 10. Mariners' wages due or accruing. 11. Debts secured by bills of exchange or negotiable promissory notes. 12. Salary or wages to the amount of ten dollars, when the cause of action is not for necessities. 13. Wages of wife or minor children of debtor. There is no homestead exemption.

SOUTH CAROLINA.

ACTIONS. All distinctions between actions are abolished, and there is but one form for all civil actions, prosecuted in the name of the real party in interest, except in case of executors, administrators, etc., and begun by the service of a summons.

ARREST. Defendant may be arrested on affidavit on the part of the plaintiff: 1. In an action for money received or property embezzled or fraudulently misappropriated by a public officer, or an attorney, or officer or agent of a corporation, as such, or factor, agent, or broker, or for any misconduct or neglect in official or professional employment. 2. In an action to recover possession of personal property fraudulently detained, or when the property is so disposed of that it cannot be found by the sheriff, and with intent to deprive plaintiff of benefit of the same. 3. Where the defendant was guilty of fraud in contracting the debt or in concealing or disposing of the property sued for, or where the action is for damages for fraud or deceit. 4. Where the defendant has removed or disposed of his property, or is about to do so, with intent to defraud creditors. 5. Suit may be brought on a note, etc., nor yet due, and arrest made on affidavit by plaintiff that defendant, being a resident of the State, is about to abscond or depart from the State, and that plaintiff had no knowledge of his intent to leave the State

when he took the note. No female can be arrested. The plaintiff must give an undertaking with security.

ATTACHMENT may issue in an action of contract to recover money or property or damages for the wrongful conversion or detention of personal property or for injuries to person or property, where the defendant is a foreign corporation or a non-resident, or has absconded or concealed himself, or is about to remove his property from the State, or has assigned, disposed of, or secreted his property, or is about to do so, with intent to defraud creditors, on an affidavit stating one of the above grounds, and giving security to defendant. Attachment may also issue against owner, agent, or master of sailing vessel for pilotage fees on affidavit stating amount due and that vessel is about to depart from the State. Attachment will lie for a debt not due if fraud be shown in evading the debt. The plaintiff must give security.

GARNISHMENT is effected only by attachment.

JUDGMENT is a lien on real property for ten years; and judgments for money bear interest at seven per cent.

There is no stay of execution except on appeal and giving bond.

EXEMPTIONS. Homestead of the head of the family not exceeding in value one thousand dollars with the yearly products thereof, and personal property to the amount of five hundred dollars.

SOUTH DAKOTA.

ACTIONS are commenced by service of summons and must be prosecuted by the real party in interest.

ARREST. An order of arrest may be obtained in the following cases on plaintiff's filing an affidavit setting forth the facts on which it is asked, and furnishing security, viz: In an action for damages not founded on contract, where defendant is a non-resident, or is about to remove from the State, or where action is for injury to person or character or for injury to or wrongfully taking, detaining, or converting property; in an action for a fine or penalty or on a promise to marry, or for money received or property embezzled, or fraudulently misapplied by a public officer, attorney, or other person, in a fiduciary capacity, or for any misconduct or neglect in office or in a professional employment; in an action for recovery of personal property disposed of or concealed to prevent its being taken by the sheriff, or where debt was fraudulently contracted, or where debtor has removed his property or is about to do so to defraud creditors. Arrest for debt is abolished. No female can be arrested except on action for wilful injury to person, character, or property. The plaintiff must give security for the costs and damages.

ATTACHMENT may issue in all cases against a foreign corporation which has not appointed an agent for service of process or, a non-resident, or a defendant who has absconded or concealed himself, or is about to remove his property from the State, or has disposed of or secreted his property, or is about to do so with intent to defraud creditors.

Plaintiff must file affidavit stating ground of claim and amount and one of causes above stated or that debt was incurred for property obtained under false pretenses, and give security.

Attachment may issue in certain cases before maturity of claim.

GARNISHMENT. Proceedings may be instituted prior to judgment in actions on contracts, and after execution issued in any action.

JUDGMENT is a lien on defendant's real estate in every county where it is docketed, for ten years from time of docketing in the county where rendered.

EXEMPTION. Homestead not exceeding one acre in a town plot, or one hundred and sixty acres elsewhere, with house and buildings, to the extent of five thousand dollars. All family pictures, pew, burial lot, family Bible and school-books, family library not exceeding in value two hundred dollars, wearing apparel of debtor and family, provisions and fuel for one year, and other personal property to be selected by debtor not exceeding in value seven hundred and fifty dollars, or three hundred dollars if debtor is single.

Instead of the seven hundred and fifty dollars exemption, debtor, the head of a family may select the following:—Books and musical instruments for use of family not exceeding two hundred dollars, household and kitchen furniture not exceeding two hundred dollars, two cows, five swine, two yoke of oxen or one span of horses or mules, twenty-five sheep and their lambs under six months old, and all wool from the same or cloth or yarn manufactured therefrom, food for animals for one year, one wagon, one sleigh, two plows, one harrow, farming machinery and utensils not exceeding twelve hundred and fifty dollars; tools and implements of a mechanic used for his trade or business, and stock in trade not exceeding two hundred dollars; library and instruments of a professional man not exceeding three hundred dollars. Avails of life insurance received by widow or children are exempt to value of five thousand dollars.

TENNESSEE.

ACTIONS. There is only one form for all actions, which are begun by a summons issued by the clerk of the court and directed to the sheriff. Plaintiff must usually give security for costs.

ARREST. There is no arrest for debt in Tennessee.

ATTACHMENT may be had at the commencement of the action for a debt or demand due or after action begun, either before or after judgment, for any cause, where, 1, the debtor is a non-resident; 2, or is about to remove himself or his property out of the State; 3, or has removed out of the county of his residence privately, or is about to do so; 4, or has concealed himself so that process cannot be served on him; 5, has absconded or concealed himself or his property; 6, has fraudulently disposed of his property or is about to do so; 7, where any person liable for a debt, and a non-resident, dies leaving property within the State; 8, where defendant is a resident of the county, but summons is returned "not found in the county." The plaintiff or his agent must make an oath in writing of the nature and amount of the debt, and one of the above causes, and give security to the defendant.

GARNISHMENT. Where property, choses in action, or effects of the defendant are in the hands of a third party, or such party is indebted to the defendant, attachment may issue by garnishment. Also on execution, where the sheriff cannot find sufficient property to satisfy the execution.

JUDGMENT is a lien on real estate, in the county where rendered, from the date of rendition, and in other counties from the date of registration of a

certified copy; but the lien is lost unless execution is taken out and the land sold within twelve months after rendition. Judgment bears interest at six per cent.

STAY OF EXECUTION. On judgments before a justice of the peace execution will be stayed for eight months on giving security for debt, interest, and costs.

EXEMPTIONS. Ninety per cent. of the income already earned of a resident 18 years of age or over, earning or receiving \$40.00 or under per month is exempted, and \$36.00 when the amount exceeds \$40.00. Personal property of the head of a family: two beds, bedsteads and bedding, and for every three children one additional bed, etc.; the bedsteads not to exceed twenty-five dollars in value; two cows and calves, and if the family consists of six persons or more, three cows and calves; one dozen knives and forks, dozen plates, six dishes, set of tablespoons, set of teaspoons, tray, two pitchers, waiter, coffee-pot, tea-pot, canister, cream-jug, one dozen cups and saucers, dining-table, and two table cloths, dozen chairs, bureau, not to exceed forty dollars in value, safe or press, wash-basin, bowl and pitcher, washing-kettle, two washing-tubs, churn, looking glass, chopping-axe, spinning wheel, loom and gear, pair cotton cards, pair wool-cards, cooking-stove and utensils, set ordinary cooking utensils, meal-sieve, wheat-sieve, cradle, Bible and hymn-book, and all school-books, two horses or two mules, or one horse and one mule, or one horse or mule, and one yoke of oxen and gear, two-horse or one-horse wagon to the value of seventy-five dollars, and the harness, man's saddle, woman's saddle, two riding-bridles, twenty-five barrels of corn, twenty bushels of wheat, five hundred bundles of oats, five hundred bundles of fodder, one stack of hay to the value of twenty dollars; if the family is less than six persons, one thousand pounds of pork slaughtered or on foot, or six hundred pounds of bacon; or if the family consists of more than six persons, twelve hundred pounds of pork, or nine hundred pounds of bacon, poultry to the value of twenty-five dollars, fifty sheep and the fleeces from same, twenty-five stands of bees and the products of same; six cords of wood or one hundred bushels of coal, one sewing-machine, one hundred gallons of sorghum molasses, one hundred pounds soap, fifty pounds lard, one hundred pounds flour, fifty pounds salt, one hundred pounds beef or mutton, twenty pounds coffee, fifty pounds sugar, three bushels meal, one bushel dried beans, one bushel dried peas, fifty bushels of Irish potatoes, fifty bushels sweet potatoes, ten bushels turnips, one pair andirons, one clock, one pound each of pepper, spice, and ginger, canned fruit put up for the family not exceeding twenty dollars in value, twenty bushels of pea-nuts, three strings of red peppers, four gourds, carpet in use, not exceeding twenty-five dollars in value, and two hundred bushels of cotton-seed. If the head of the family is engaged in agriculture, two plows, two hoes, grubbing-hoe, cutting-knife, harvest-cradle, plow-gears, pitchfork, rake, three iron wedges, five sheep, ten stock hogs. Also the tools of a mechanic, and if he be the head of a family, two hundred dollars' worth of lumber or material or products of his labor. One gun to every male person, and to every female who is the head of a family. To a head of a family, fifty pounds of picked cotton, twenty-five pounds wool, leather for winter shoes; also three hundred pounds of tobacco

in the hands of the producer, and thirty-five dollars' worth of roughness consisting of oats, fodder, or hay. A homestead of the head of a family of the value of one thousand dollars.

TEXAS.

ACTIONS are begun by petition filed with the clerk of the court upon which a citation issues to the defendant.

ARREST for debt is abolished.

ATTACHMENTS may issue upon an affidavit by the plaintiff or his attorney, stating that the debt is a just one, and the amount of the same, together with one of the following grounds: 1. That defendant is a non-resident or a foreign corporation. 2. That he is about to remove out of the State, and has refused to pay or secure plaintiff's claim. 3. Or that he secretes himself, so that process cannot be served on him. 4. That he has secreted his property for the purpose of defrauding creditors, or is about to do so. 5. That he is about to remove his property out of the State, without leaving sufficient remaining for the payment of his debts. 6. That he is about to remove his property beyond the jurisdiction of the court, with intent to defraud creditors. 7. That he is about to transfer or secrete his property, or has done so, with intent to defraud creditors. 8. That he is about to convert his property into money, for the purpose of defrauding creditors. 9. That the debt is due for property obtained under false pretences. And he must also swear that the attachment is not sued out for the purpose of injuring the defendant, and that the original petition is true, and give security to defendant.

GARNISHMENT may issue after suit brought on affidavit of plaintiff that the amount claimed is just, due, and unpaid; that he does not know of any property of defendant not exempt, sufficient to satisfy the claim, and that he believes that any parties (naming them) are indebted to the defendant, or have property or effects of the defendant; also, where judgment has been rendered, or attachment sued out on affidavit.

JUDGMENT is a lien on real estate in the county where it was rendered, and in other counties it becomes such by filing a transcript. The lien continues for ten years, but unless execution issues within twelve months it ceases to bind the property.

STAY LAWS. Stay of execution is allowed only in justices' courts for three months, on giving bond with good security.

EXEMPTIONS. A homestead of two hundred acres not in any town or city, or a lot or lots, in a city, town, or village, not to exceed five thousand dollars in value. Also to every head of a family, all household and kitchen furniture, all implements of husbandry, tools or apparatus of trade or profession, family library, and family portraits and pictures, five milch cows and calves, two yoke of oxen with yokes and chair, two horses and one wagon, one carriage or buggy, one gun, twenty hogs, twenty head of sheep, all provisions and forage for home use, bridles, saddles, and harness necessary for the use of the family, and a lot in a cemetery; to every person not the head of a family, a horse, bridle, saddle, necessary wearing apparel, tools, apparatus, and private library, and burial lot. Current wages cannot be garnished.

UTAH.

ACTIONS. There is but one form of civil action, which is commenced by the filing of a complaint and the issuing of a summons. Non-residents may be required to give security for the costs.

ARREST. No person can be arrested in a civil action except an absconding debtor. Plaintiff must show by affidavit that case is within this provision, and furnish written undertaking with two sureties for not less than five hundred dollars, to pay all costs and damages incurred by defendant in case the arrest be unlawful.

ATTACHMENT. Attachment may issue at commencement of the suit or at any time thereafter, on filing with the clerk of the court an affidavit showing that defendant is indebted to plaintiff, specifying the amount above all legal set-offs, and whether upon a judgment or an express or implied contract, and that the same has not been secured by mortgage or pledge, or that if originally so secured, that the security has become valueless without any act of the plaintiff, that the same is an actual, *bona fide*, existing demand, due and owing from defendant to plaintiff, and that the attachment is not sought nor the action prosecuted to hinder, delay, or defraud any creditor, and specifying one or more of the following causes: That the defendant is a non-resident, or has departed or is about to depart from the State to the injury of his creditors, or stands in defiance of an officer, or conceals himself so that process cannot be served upon him, or has assigned, disposed of, or concealed any of his property with intent to defraud his creditors, or is about to do so, or has fraudulently contracted the debt or incurred the obligation on which the action is brought. Plaintiff must also give security for costs and damages.

GARNISHMENT. Property or debts due to defendant from third persons may be garnished.

JUDGMENTS are liens upon real estate owned by the defendant in the county, for eight years from the time of docketing, and may be made liens in any other county, from the time of filing a transcript with the recorder.

STAY LAWS. There is no provision for the stay of execution, except by appeal.

EXEMPTIONS. Chairs, tables, desks, and books of the value of two hundred dollars; library and musical instruments, necessary household furniture, etc., of the value of three hundred dollars; sewing-machine, carpets, family paintings, provision on hand for three months, two cows with their sucking calves, and two hogs and all sucking pigs, wearing apparel, beds and bedding; farming implements of the value of three hundred dollars; two oxen, horses, or mules, and harness, and food for animals for sixty days; a cart or wagon; seed, grain, or vegetables, not exceeding in value two hundred dollars; crops not exceeding two hundred dollars; tools and implements of a mechanic or artisan, not exceeding in value five hundred dollars; the seal and records of a notary public; the instruments and chests of a surgeon, physician, surveyor, or dentist, with their libraries, and the law libraries and office furniture of attorneys and judges, and libraries of ministers, type-writing machine of stenographer, etc.; printing presses, type, etc.,

of printer, not exceeding five hundred dollars; the cabin of a miner, not exceeding five hundred dollars in value, and his tools and appliances not exceeding in value five hundred dollars; two oxen, horses or mules, and harness and vehicle by which a cartman, huckster, teamster, or other laborer habitually earns his living; and one horse, harness, and vehicle of a physician, surgeon, or minister, with feed for the horse for three months; one half the debtor's earnings for personal services within thirty days preceding the levy if he has a family dependent on him; life insurance policies and benefits where the annual premiums do not exceed five hundred dollars; all arms, ammunition, and accoutrements required by law to be kept; all public buildings and churches; to the head of a family, a homestead to be selected by the debtor, not exceeding fifteen hundred dollars in value, and the further sum of five hundred dollars to his wife, and two hundred and fifty dollars for each other member of his family.

VERMONT.

ACTIONS. The common law is in force, and the old actions are in use. Process is by writ of summons or attachment.

ARREST. Defendant may be arrested in any action of tort for want of attachable property, and in an action of contract, or on execution issued in an action of contract, on an affidavit that the affiant believes that defendant is about to abscond or remove from the State, and has secreted his property to the amount of twenty dollars not exempt. Females cannot be arrested in actions of contract.

ATTACHMENT issues of right on original writ, without affidavit or bond. Personal property attached must be taken possession of by the officer or a copy of process and return thereon filed in town clerk's office and notice given to the defendant. It is a lien on personal property for thirty days after judgment, and real property for five months from such judgment.

GARNISHMENT is called **TRUSTEE PROCESS**. Action on contracts may be begun by trustee process, and any persons having goods, effects, or credits may be summoned and the property attached. Debts and legacies, absolutely due, may be so attached, and corporations summoned as trustees.

JUDGMENTS bear interest at six per cent., and are not liens on real property. (*See ATTACHMENT.*) There is no stay of execution.

EXEMPTIONS. Suitable apparel, bedding, tools, arms, and articles of household furniture necessary for the debtor and his family, one sewing-machine, one cow, not exceeding one hundred dollars in value, the best swine, or meat from one swine, ten sheep not exceeding one hundred dollars in value, and one year's produce in wool, yarn, or cloth, forage for ten sheep and one cow and two oxen or horses, for the winter, ten cords of firewood or five tons of coal, twenty bushels of potatoes, all growing crops, ten bushels of grain, one barrel of flour, three swarms of bees, and hives and produce in honey, two hundred pounds sugar, lettered gravestones, Bible and other books used in the family, one pew in church, live poultry to the value of ten dollars, professional books and instruments of physician or dentist, and professional books of an attorney or clergyman, in each case to the value of two hundred dollars, one yoke of oxen or steers, two horses kept and used

for team work, and such as the debtor may select in lieu of one yoke of oxen or steers, but not exceeding three hundred dollars in value, arms and equipments used by any soldier in the service of the United States and kept as mementoes of service, one two-horse wagon or one one-horse wagon or one ox cart, one sled or set of traverse sleds, two harnesses, two halters, two chains, one plow, and one ox yoke which, with the oxen, steers, or horses exempted, shall not exceed three hundred and fifty dollars in value, also mechanic's tool chest. A homestead of a housekeeper, or head of a family, to the value of five hundred dollars.

VIRGINIA.

ACTIONS. The common law forms, except replevin, remain, and actions are begun by original writ and summons. The assignee of a bond or note may sue in his own name.

ATTACHMENT may issue on affidavit that a defendant is—1. A foreign corporation; 2. Is a non-resident of the State having estate or debts due him within the county where suit is brought; or 3. Is removing or about to remove from the State with intent to change domicile; or 4. Has removed or is about to remove property sued for, or his estate or a material part thereof so that execution on a judgment will be unavailing; or 5. Has converted or is about to convert his property or part thereof into money, securities, etc., with intent to hinder, delay, or defraud creditors; or 6. Has disposed of or is about to dispose of his estate or part thereof with like intent; or against a tenant for rent not due but payable within a year, on affidavit stating amount of rent reserved, when payable, and that tenant has within thirty days removed or is about to remove his effects from the premises, not leaving property liable to distress, sufficient to satisfy the rent to become payable; or against a vessel or the estate of the master or owner on a claim for materials or supplies, or for wharfage, pilotage, contract for transportation, or for injury to person or property by such vessel or any person in charge of her.

ARREST. There is no imprisonment for debt, but defendant may be arrested and held to answer on an affidavit showing the cause of action, the amount claimed, and that the defendant is about to quit the State.

GARNISHMENT is allowed on original attachment against any person having goods, effects, or credits of defendant, or who is indebted to him, and also on writ of *feri facias*, on suggestion by judgment creditor that there is a lien by such writ on any third party as having property of the defendant.

JUDGMENT is a lien on real estate in the county where rendered from the first day of the term when rendered, and every other county from the time of docketing in such county, but as against a purchaser for value it must be duly docketed. The lien may be enforced in a court of equity. If it appears to the court that the rents and profits of the property subject to the lien will not satisfy the judgment in five years, it may order the property, or part of it, to be sold, and apply the proceeds to discharge the judgment. Judgments bear interest at six per cent.

STAY OF EXECUTION. There is no stay of execution except on appeal, and on small claims in the justice courts, in which on security being given execution may be stayed for a period not exceeding ninety days.

EXEMPTIONS. To a householder—1. Family Bible. 2. Family pictures, school-books and library for family use, to the value of one hundred dollars. 3. Seat or pew in church. 4. Lot in a burying-ground. 5. Necessary wearing apparel, beds, bedding, and bedsteads, stoves and appendages put up, and necessary for family use, not exceeding three. 6. One cow and her calf, one horse, six chairs, one table, six knives, forks, and plates, one dozen spoons, two dishes, two basins, one pot, one oven, six pieces wood or earthen ware, one loom and appurtenances, one safe or press, one spinning wheel, one pair of cards, one axe, two hoes, ten barrels corn, or in lieu thereof twenty-five bushels of rye or buckwheat, five bushels wheat, or one barrel of flour, two hundred pounds of pork or bacon, three hogs, forage or hay to the value of ten dollars, one cooking-stove and utensils, one sewing-machine, a mechanic's tools and utensils of trade to the value of one hundred dollars, the boat and tackle of an oysterman or fisherman not exceeding two hundred dollars; and to a laboring man being a householder, wages not exceeding fifty dollars per month. If the debtor is engaged in agriculture, one yoke of oxen, or one pair of horses or mules, with necessary gearing, one wagon or cart, two plows, one drag, one harvest cradle, one pitchfork, one rake, two iron wedges. In addition to the above is allowed to a householder, widow, or minor children, a homestead of real estate or personal property to the value of two thousand dollars, except as to certain preferred claims.

WASHINGTON.

ACTIONS. All distinctions in the forms of actions are abolished. They must be prosecuted by the real party in interest, and are commenced by filing a petition and serving a summons.

ARREST. Defendants may be arrested by order of court in the following cases: in an action for the recovery of damages, on a cause of action not arising out of contract, when defendant is a non-resident or is about to remove from the State, or in an action for injury to person or character, or for injuring or wrongfully taking, detaining, or converting personal property; in an action for a fine or penalty or on a promise to marry, or for money received or property embezzled or fraudulently misapplied or converted to his own use by a public officer, attorney, an officer or agent of a corporation, a factor, agent, broker, or other person acting in a fiduciary capacity, or for misconduct or neglect in office or professional employment; in an action to recover the possession of personal property unjustly detained, when it has been concealed, removed, or disposed of so that it cannot be taken by the sheriff, with intent that it shall not be taken, so as to deprive plaintiff of benefit thereof; when defendant has been guilty of fraud in contracting the debt or incurring the obligation on which the suit is brought, or in concealing or disposing of property sued for; or has removed or disposed of his property, or is about to do so, with intent to defraud creditors; when the action is to prevent threatened injury to property in which plaintiff claims an interest; on final judgment or order of court when defendant having no

property subject to execution has money which he ought to apply in payment but refuses, with intent to defraud plaintiff.

Plaintiff must furnish security for costs and damages.

ATTACHMENT may be had on filing affidavit of net amount due and that attachment is not sought, nor action brought to hinder, delay, or defraud creditors, and either that defendant is a foreign corporation, or a non-resident; or that he conceals himself, or has absented himself from his usual place of abode so that process cannot be served on him; or that he has removed or is about to remove property from the State to delay or defraud creditors; or that he has assigned, secreted, or disposed of property, or is about to do so to delay or defraud creditors; or that he is about to convert property into money to place it beyond reach of creditors; or that debt was fraudulently contracted; or that damages sued for are for injuries arising from some felony or for seduction.

Attachment may issue before debt is due, on affidavit that defendant is about to dispose of property to defraud creditors; or that he is about to remove from the State, and refuses to arrange for payment of debt, which contemplated removal was unknown to plaintiff when debt was contracted; or that he has disposed of property to defraud creditors; or that debt is for property obtained by false pretenses. Plaintiff must give security.

GARNISHMENT. Debts, credits, and personal property in the hands of third persons may be attached. Wages to amount of one hundred dollars exempt, except for necessities, then only part of that amount.

JUDGMENT is a lien on land for five years from date of judgment in the county where rendered, in other counties from date of filing transcript with county clerk.

STAY OF EXECUTION is allowed on judgments as follows: In the Supreme Court, on sums under five hundred dollars, thirty days; on sums between five hundred and fifteen hundred dollars, sixty days; on sums over fifteen hundred dollars, ninety days. In the Superior Court, on sums under three hundred dollars, two months; between three hundred and one thousand dollars, five months; over one thousand dollars, six months.

EXEMPTIONS. To every person all wearing apparel, private libraries not exceeding five hundred dollars in value, family pictures and keepsakes, firearms, and a boat. To a householder being the head of a family, a homestead of the value of two thousand dollars, while occupied by such family; one bed and bedding, and one additional bed and bedding for every additional member of the family, and other household goods of the value of five hundred dollars; two cows with their calves, five swine, two stands of bees, thirty-six domestic fowls, and provisions and fuel for six months. To a farmer, one span of horses and harness, or two yokes of oxen, one wagon with farming utensils not exceeding five hundred dollars in value, one hundred and fifty bushels of wheat and oats or barley, fifty bushels of potatoes and ten bushels each of corn, peas, and onions. To a mechanic, the tools of his trade, and material to the value of five hundred dollars. To a physician, his library not exceeding five hundred dollars in value, horse and carriage, and instruments, and medicines to value of two hundred dollars. To attorneys and clergymen, and other professional men, their libraries not exceeding one

thousand dollars in value and office furniture, stationery, and fuel, worth two hundred dollars. To persons engaged in lightering, one or more lighters or scows and a small boat, not exceeding the aggregate value of two hundred and fifty dollars. To a teamster, a span of horses or mules, harness, and one wagon, cart, or dray. To a person engaged in logging, three yokes of oxen and implements of the value of three hundred dollars. Proceeds of life insurance and pensions are also exempt.

WEST VIRGINIA.

ACTIONS. The old forms of actions and writs are preserved, and actions are begun in justices' courts by service of summons returnable in not less than five, nor more than thirty, days; in circuit courts, returnable within ninety days. The assignee of a bond, note, or writing not negotiable, may sue in his own name.

ATTACHMENT is allowed in actions for any claim or debt on contract, or for damages for any wrong, on an affidavit on behalf of the plaintiff, stating the nature and amount of the claim, and 1. That defendant, or one of defendants, is a foreign corporation or non-resident. 2. That he has left, or is about to leave, the State with intent to defraud creditors. 3. That he so conceals himself that service cannot be had on him. 4. That he is removing, or is about to remove, his property from the State, so that an execution, when obtained, will be unavailing. 5. That he is converting, or is about to convert, his property into money or securities with intent to defraud creditors. 6. That he has assigned or disposed of his property, or is about to do so, with intent to defraud creditors. 7. That he has property or rights of action which he conceals. 8. That he fraudulently contracted the debt or liability in question. Plaintiff must also give security for damages and costs.

ARREST. Defendant may be arrested and held to bail on an affidavit stating the nature and justice of the claim, and the amount, and, 1. That defendant has removed, or is about to remove, his property from the State, with intent to defraud creditors. 2. That he has converted, or is about to convert, his property into money with like intent. 3. Or has assigned, disposed of, or removed his property, or is about to do so, with like intent. 4. That he has property or rights in action which he fraudulently conceals. 5. That he fraudulently contracted the debt or liability. 6. That he is about to leave the State permanently, without having paid plaintiff's demand.

Plaintiff must also give security for damages and costs.

GARNISHMENT. In the writ of attachment, the plaintiff may designate any third parties as having effects of the defendant in their hands, and such parties may be summoned as garnishees.

JUDGMENTS bear interest at six per cent.; are liens on real estate in every county from the date of docketing in the county where the land is, and the lien continues for ten years, but the judgment must be docketed within sixty days from the date of rendition, or before any deed from the debtor to a third party is delivered for record. A writ of *feri facias* is a lien on personal property from the time of delivery to the sheriff.

STAY LAW. In justices' courts, by giving bond with surety, stay of execution is allowed as follows: Where the judgment, exclusive of interest and costs, does not exceed fifty dollars, two months; between fifty and one hundred dollars, five months; over one hundred dollars, six months.

EXEMPTIONS. Any husband or parent, or the widow, or infant children of deceased parents may set apart a homestead to the value of one thousand dollars, as against debts accrued after date of filing declaration of homestead, and personal property to the value of two hundred dollars. The working tools of a mechanic, artisan, or laborer, to the value of fifty dollars, provided the whole amount of exemptions does not exceed two hundred dollars.

WISCONSIN.

ACTIONS. All distinctions have been abolished, and there is now but one form, which must be prosecuted in the name of the real party in interest, except in case of executors, administrators, and trustees, and which is begun by the service of a summons on the defendant.

ARREST. Defendant may be arrested, 1. In an action to recover damages not on contract, where the defendant is a non-resident, or is about to remove from the State, or where the action is for injury to the person or character, or for injury to, or wrongful taking, detaining, or converting property, or in an action to recover damages for property taken under false pretences. 2. In an action for a fine or penalty, or for money received, or property embezzled, or fraudulently misapplied by a public officer or attorney, or an officer of a corporation as such, or factor, agent, or broker, or for misconduct or neglect in official or professional employment. 3. In an action to recover property unjustly detained, where it is so concealed that the sheriff cannot find the same. No female can be arrested except for wilful injury to person, character or property.

An affidavit must be made on the part of the plaintiff, stating the cause of action, and one of the above causes, and security must be given to defendant.

ATTACHMENT is allowed on an affidavit that the defendant is indebted to plaintiff, and stating the amount, which must exceed fifty dollars, that it is due on contract or judgment, and, 1. That defendant has absconded, or is about to abscond, or is concealed to the injury of his creditors, or to avoid service of summons. 2. That defendant has assigned, disposed of, or concealed his property, or is about to do so, with intent to defraud creditors. 3. That the defendant has removed, or is about to remove, his property from the State, with intent to defraud creditors. 4. That the debt was fraudulently contracted. 5. That he is a non-resident. 6. Or a foreign corporation, or if incorporated in the State, that all the proper officers on whom to make service are non-residents or cannot be found. Or the affidavit shall state that a cause of action sounding in tort exists for an amount exceeding fifty dollars, and that the defendant is not a resident of the State, or that his residence is unknown and cannot be ascertained, or that defendant is a foreign corporation. Attachment may issue on a demand not yet due in any case mentioned in the first four subdivisions. Plaintiff must also give bond.

GARNISHMENT is allowed on an affidavit on behalf of the creditor, that he believes that any third person (naming him) has property, effects, or credits

of defendant, or is indebted to him, and that defendant has not property sufficient to satisfy his demand; also on execution, on a similar affidavit.

JUDGMENT is a lien on real estate in the county where rendered from the date of docketing, and in other counties from the time of filing a transcript, and the lien continues for ten years. It bears interest at six per cent., except judgment for foreclosure which is at rate specified in mortgage, not exceeding six per cent.

STAY LAWS. In justices' courts, on giving bond with surety within five days after judgment was rendered, stay of execution is allowed as follows: On sums not exceeding ten dollars, exclusive of costs, one month; between ten and thirty dollars, two months; between thirty and fifty dollars, three months; over fifty dollars, four months.

EXEMPTIONS. A homestead not exceeding forty acres, used for agriculture, and a residence, and not included in a town plat, or a city or village, or instead, one-quarter of an acre in a recorded town plat, city, or village occupied and not exceeding five thousand dollars in value. Also, 1. Family Bible. 2. Family pictures and school-books. 3. Private library. 4. Seat or pew in church. 5. Right of burial. 6. Wearing apparel, beds, bedsteads, and bedding kept and used in the family, stoves and appurtenances put up and used, cooking utensils and household furniture to the value of two hundred dollars, one gun or other firearm to the value of fifty dollars. 7. Two cows, ten swine, one yoke of oxen, one horse or mule, or, in lieu thereof, a span of horses or mules, ten sheep and the wool therefrom, necessary food for exempt stock for one year, provided or growing, or both, one wagon, cart, or dray, one sleigh, one plow, one drag, and other farm utensils including tackle for the teams, to the value of two hundred dollars. 8. Provisions and fuel for the family for one year. 9. Tools and implements, or stock in trade of a mechanic or miner, trader, or other person, used and kept for carrying on business, not exceeding two hundred dollars in value. 10. Money arising from insurance of exempt property destroyed by fire. 11. Interest in patents held by the inventor. 12. Sewing-machine. 13. Sword, plate, books, or articles presented by Congress, or legislature of a State. 14. Printing materials and presses to the value of fifteen hundred dollars, but only four hundred dollars is exempt from payment to employees. 15. Earnings of a married person necessary for family support, for three months previous to issuing process, not exceeding sixty dollars per month. 16. Horse, arms and equipments of a militiaman. 17. Books, maps, etc., used for making abstracts of title to land. 18. Pensions. 19. One thousand dollars in shares of building association held by one not owning homestead. Proceeds of policy of insurance on life of a minor, payable to parents, are exempt as against their creditors, but not against creditors of the minor.

WYOMING.

ACTIONS. There is but one form of action at law, which is commenced by filing a petition on which a summons issues.

ARREST. An order of arrest may be obtained on plaintiff's giving security and filing affidavit setting forth the nature and amount of his claim, that it is just, and establishing one or more of the following particulars: 1. That

defendant has removed or begun to remove property out of jurisdiction of court with intent to defraud creditors. 2. That he has begun to convert property into money to place it beyond reach of creditors. 3. That he has property or rights of action fraudulently concealed. 4. That he has assigned, removed, or disposed of property to defraud creditors. 5. That he fraudulently contracted debt on which suit is brought. 6. That the money or thing for which recovery is sought was lost by gambling or by bet or wager. On substantially same grounds defendant may be arrested on execution by order of court.

No female can be arrested except for wilful injury to person, character, or property.

ATTACHMENTS are granted in a civil action for the recovery of money, on plaintiff's giving security and filing an affidavit stating the nature and amount of his claim, that it is just, and the existence of one of the following grounds: 1. That defendant is a foreign corporation or non-resident. 2. Has absconded with intent to defraud creditors. 3. Has left county of residence to avoid service of summons. 4. Conceals himself so that summons cannot be served on him. 5. Is about to remove his property out of the jurisdiction of the court, with intent to defraud creditors. 6. Is about to convert his property into money to place it beyond reach of creditors. 7. Has property or rights of action concealed. 8. Has assigned, removed, or disposed of his property, or is about to do so, to defraud creditors. 9. Fraudulently contracted debt sued on.

Attachment may issue on claims not yet due, on affidavit showing existence of any of the above grounds from second to ninth inclusive.

GARNISHMENT. When plaintiff makes oath in writing that he believes that any person or corporation named has property of the defendant in his possession, describing the same, and the officer cannot get possession of such property, such person or persons may be summoned as garnishee.

JUDGMENT is a lien on real estate in the county where entered, from the first day of the term at which judgment is entered, except judgments by confession and those rendered at the term action is commenced, which are binding only from the day they are rendered. Unless execution is taken out and levied within one year, the judgment ceases to be a lien as against any other judgment creditor, and unless the execution is taken out within five years, the judgment becomes dormant and the lien expires.

STAY OF EXECUTION is allowed in justices' courts and District Courts for six months on filing bond.

EXEMPTIONS. Every householder, the head of a family, is entitled to a homestead not exceeding in value twenty-five hundred dollars, consisting of a house or lot in a town or city, or a farm of not more than one hundred and sixty acres of land. The wearing apparel of every person is exempt, and the following property owned by any person the head of a family, viz: the family Bible, pictures, and school-books; rights of burial; furniture, bedding, provisions, and such other articles as the debtor may select, not to exceed in all the value of five hundred dollars; the tools, team, and implements, or stock in trade, of a mechanic, miner, or other person, used or kept for the purpose of carrying on his trade or business, not exceeding three

hundred dollars; the library, instruments, or implements of any professional man, not exceeding three hundred dollars; half the earnings of debtor within sixty days before levy not exceeding fifty dollars, when necessary for support of family.

CHAPTER XXXVII.

THE LIENS OF MECHANICS AND MATERIAL MEN FOR THEIR WAGES AND MATERIALS.

In nearly all our States there are now some provisions for securing to mechanics, and to persons supplying materials (who are called "material men"), their wages and pay for their materials, by means of liens, as they are called in law. A lien is a *hold* upon or a valid claim against property. This means that every mechanic employed upon a house, and, in most of the States, upon a vessel, and in some upon any property whatever, as a railroad or canal, either in the construction or repair of it, has a lien upon the property on which he has labored, or for which he has supplied materials, for the amount of his wages and the price of his materials. This lien or claim he has for a certain time; and during that time he may either sue for his wages or materials, and make an attachment of the property, or in some States, file a petition with the proper court; and in either case he may have the property sold to pay for his wages or materials, unless the owner redeems it.

And, not only must the lien be enforced within a limited time, but care is taken that notice of the intention to claim a lien shall be given to the owner of the property, either directly or by putting the notice on record. The reason of these precautions is obvious enough. The purpose of the law is to assist and protect the mechanic, or material man, but not to enable him to commit a fraud or do an injury to his neighbors. And it would be an injury to a man to let him buy a house and pay full price for it, and then tell him that the mechanics who built it had a lien (which is much the same in effect as a mortgage) upon the house, without his knowing anything about it. And it would be an injury to an owner, who had contracted with the master-workman to repair or change his house at great expense, to settle with this

master workman in due time, and pay him the full amount of his bill, without any notice to the owner that he was under an obligation to pay again for all the labor spent upon his house, or let the house go on execution.

Of all the laws for the recovery of debts, and the enforcement of the liens of mechanics referred to in this and the preceding chapter, the provisions now in force are quite recent. Only of late years has imprisonment for debt been greatly mitigated or abolished, and the trustee or garnishee process made what it now is, exceedingly convenient and useful. The homestead law and the lien law, though now so universal, are modern inventions, or, at least, of modern introduction. One effect of this recent origin is, that important practical questions still exist as to their construction, application, and effect, which only time can solve.

I give, annexed to this chapter, an abstract of the Laws of all the States relating to Mechanics' Liens.

In this chapter nothing more has been attempted than to indicate distinctly to the mechanic what rights he may possess and what securities he may hold, and how he may lose the rights and securities he possesses, and to the owner or buyer what liabilities he may incur, unless the one and the other take the proper course which the law has provided for their safety.

The forms to be used under the lien laws are not usually prescribed by statute. Those given below are in use in some of our principal cities; and the same, in substance, would be suitable anywhere, with such modifications as may be necessary to adapt them to the provisions of the law of the State where they are to be used.

(333.)

A Notice under Mechanics' Lien Law.

(To be filed with the Clerk of the County or other officer designated by statute.)

To _____ Esquire,

Clerk of the County of _____

SIR,

Please to take Notice, That I, _____, residing at No. _____ Street, in _____, have a claim against _____ amounting to the sum of _____ due to me, and that the claim is made for and on account of (*here state the work or materials*) and that such work was done (*or materials furnished*) in pursuance of (*here describe the contract*) which building is owned by _____, situated in the _____ ward, of the city of _____ on the

_____ side of _____ Street, and is known as No. _____. The following is a diagram of said premises (*or, the said premises being described as follows*).

And that I have and claim a lien upon said house or building, and the appurtenances and lot on which the same shall stand, pursuant to the provisions of an act of the Legislature of the State of _____ to secure the payment of mechanics, laborers, and persons furnishing materials towards the erection, altering, or repairing of buildings.

Dated, _____ this _____ day of _____, 19____

(Signature.)

COUNTY OF _____ }
CITY OF _____ } ss.

(*The name of the party claiming the lien*) being duly sworn, says, that he is _____ the claimant mentioned in the foregoing notice of lien, that he has read the said notice and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

Sworn to before me, this _____ day of _____, 19____

(Signature.)

(334.)

A Bill of Particulars of Mechanic's Claim.

(*To be served on owner, and in some States to be recorded with the notice.*)

A Bill of Particulars Of the amount claimed to be due from _____ for and on account of (*work or materials*) and that such work was done (*or materials furnished*) in pursuance of (*state the contract or order*) which building is owned by _____, situated in the _____ ward of the city of _____ on the _____ side of _____ Street, and is known as No. _____ of said street.

(*Here insert itemized statement of labor and materials furnished with the date of each item.*)

(Signature of Claimant.)

To (name of owner.)

(Date.)

(335.)

A Release and Discharge of a Mechanic's Lien.

I do Hereby Certify, That a certain mechanic's lien, filed in the office of the clerk of the _____ county of _____ the _____ day of _____, one thousand nine hundred and _____, at _____ o'clock in the _____ noon, in favor of _____ claimant against the building and lot, _____ situate _____ side of _____ street, and known as No. _____ in said street, whereof _____ is owner, and _____ is contractor, is discharged.

(Signature.)

_____ ss. On the _____ day of _____, one thousand nine hundred and _____, before me came _____ who is known to me to be the individual described in, and who executed the above certificate and acknowledged that he executed the same.

(336.)

Release and Discharge of a Mechanic's Lien—Another Form.

Whereas, We, the subscribers, have erected and furnished materials for erecting _____ on _____ lot or piece of ground situate _____; and have agreed to release all liens which we, or any or either of us have, or might have, on the said _____ by reason of materials furnished, or work performed, for erecting the same. Now these presents witness, that we, the subscribers, for and in consideration of the premises, and of the sum of one dollar, to each of us at or before the sealing and delivery hereof by the said _____ well and truly paid, the receipt whereof we do hereby acknowledge, have remised, released, and forever quit-claimed, and by these presents do remise, release, and forever quit-claim unto the said _____ and to his heirs and assigns, all and all manner of liens, claims, and demands whatsoever, which we, or any or either of us, now have, or might or could have, on or against the said _____ and premises, for work done, or for materials furnished, for erecting and constructing the said building, or otherwise howsoever. So that he, the said _____ and his heirs and assigns, shall and may have, hold, and enjoy, the said _____ and premises, freed and discharged from all liens, claims, and demands whatsoever, which we, or any or either of us now have, or might or could have, on or against the same, if these presents had not been made.

In Witness Whereof, We have hereunto set our hands and seals the day of the date written opposite our respective signatures.

*(Date.)**(Witnesses at signing.)**(Signatures of Claimants.)***ABSTRACT OF THE LAWS OF ALL THE STATES RELATING TO MECHANICS' LIENS.****ALABAMA.**

Every mechanic or other person who performs any work or labor, or furnishes any materials or fixtures, erection, or improvement on land, or does any repairing on the same by virtue of a contract, has a lien on such building or improvement, and upon the land on which it is situated, to the extent of one acre. The original contractor within six months, and any laborer within thirty days, and any other person within four months, must file with the judge of probate a verified statement of the account and description of the property, and name of owner, and action must be brought to enforce the lien within six months from the maturity of the debt. Mechanics also have a lien on articles made or repaired by them.

ALASKA.

Persons performing labor or furnishing materials at the instance of an owner, or his agent, upon any construction work, have a lien thereon, and upon the land on which it is located, for such labor or materials, but if the one causing the work to be done or materials furnished owns less than a

fee simple, then only such interest as he owns is subjected to a lien. Original contractors must within ninety days, and others within sixty days, of the completion of the work file a statement of their claims with the recorder of the precinct, in order to perfect their liens. Suit must be brought within six months, or, if credit is given, within six months of the expiration of the credit, but no agreement to give credit can preserve a lien longer than one year from completion of work. One performing work on an article has a lien thereon and may retain possession thereof until paid, and after ninety days may sell it at auction, first giving three weeks' notice of the sale. There are also special liens in favor of miners and laborers in mines and mining property.

ARIZONA.

Every person performing labor upon or furnishing materials for the construction, alteration, or repair of any building or other structure or improvement, may have a lien thereon, and on the land necessary for the convenient use and occupation of the same. The claimant must, within ninety days after the completion of the labor or furnishing materials, file in the office of the county recorder where the property is situated the contract, or, if it be verbal, a copy under oath of the bill of particulars, and furnish a duplicate to the debtor; a subcontractor shall, within sixty days from completion of the work, deliver to the owner if he can be found in the county, otherwise to the county recorder, an attested account of the labor and materials furnished. Liens are to be foreclosed by suit within six months.

ARKANSAS.

A mechanic or other person performing any work or labor, or furnishing any material or fixture, erection, or improvement on land or doing any repairing on the same by virtue of a contract, has a lien on such building or improvement, and upon the land upon which it is situated not exceeding one acre. He must file with the clerk of the circuit court of the county where the land is, within ninety days after ceasing to labor or to furnish materials, a just and true account of the claim, and description of the property, verified by affidavit, and suit must be begun within ninety days thereafter. Parties other than original contractor must give ten days' notice before filing claim. Actions must be commenced within fifteen months after filing the lien. Laborers have eight months in which to bring suit to enforce their lien.

CALIFORNIA.

Every person performing labor upon, or furnishing materials to be used in the construction, repairing or altering any structure, has a lien on the same for his services. In case the work is done under an entire contract, the owner is not answerable under the liens for an amount greater than he owes under such contract; provided he has filed in the office of the county recorder with such contract a bond with sureties for fifty per cent. of contract price conditioned for payment of all claims for labor and materials. Owner may withhold amounts of claims of which he has received notice. Original contractors must file their claims for liens with county recorder within sixty

days, and others within thirty days after completion of the work. Unless within ten days after completion of work owner files notice of date of completion claimants have ninety days after completion to file claims. Action cannot be brought until expiration of time allowed for filing lien, nor after ninety days after such expiration.

COLORADO.

Any person performing work, or furnishing materials on any building or other structure, or on a mine, at the instance of the owner or his agent, has a lien on the same, together with so much of the land as is necessary to the convenient use and occupation of such building or structure, and he must, within three months after the completion of the work, if an original contractor, two months if a material man, or one month if a laborer, file a sworn statement in the county recorder's office containing a notice that he claims such lien, the amount due, name of the owner and employer, the terms and conditions of the contract, and a description of the property. For labor or materials for mine or mill, statement must be filed in sixty days, and notice given to owner. Action to enforce the lien must be brought within six months after filing statement. Liens extend only to the contract price, but if the contract exceeds five hundred dollars and is not in writing and filed for record, liens subsist for all labor done or materials furnished.

CONNECTICUT.

A lien is allowed on every building or railroad in the construction or repairing of which any person has a claim for labor or materials exceeding ten dollars. The lien is dissolved unless, within sixty days after ceasing to labor or furnish materials, such person files with the clerk of the town where the building is, or, in the case of a railroad, with the Secretary of State, a description of the premises, the amount of the lien, and the date of the commencement of the claim, the same being subscribed and sworn to. Foreclosure proceedings must be commenced within two years.

DELAWARE.

A lien is allowed to any person furnishing materials or labor, or both, on any building or structure in excess of twenty-five dollars. The original contractor must file in the office of the Prothonotary of the Superior Court a statement not sooner than ninety or later than one hundred and twenty days after the completion of the building—other persons within ninety days after ceasing to labor or furnish materials. Claims for less than one hundred dollars must be filed in not less than twenty nor more than thirty days. The statement must be made under oath and contain the names of the claimant, owner, and contractor, the amount claimed, and a bill of particulars of the work done, the time when the work was done, the locality of the building and description thereof, and allege that the work was done or materials furnished, on the credit of the building or structure, that the amount of the claim exceeds seventy-five dollars, and remains unpaid. Suit must be commenced within one year after the notice is filed. The provisions of the laws have been extended to plumbing, gas-fitting, paper-hanging,

placing iron-works and machinery in mills and factories, bridge-building, construction and filling in of wharves, piers or docks, services of architects and materials furnished by them and under certain conditions to improvements to land by drainage, dredging, irrigating, filling in and erecting banks.

DISTRICT OF COLUMBIA.

Every contractor, material man, journeyman, or laborer, has a lien on building and land for work, materials furnished, or machinery or other thing placed in the building as a fixture, but not exceeding the entire contract price. Notice must be filed in the clerk's office of the supreme court during the construction or within three months after completion of buildings or repairs, of the intention to claim a lien, and the amount and the lien must be enforced by proceedings in equity within one year after filing notice, or within six months after completion of building. Mechanics have liens on articles of personal property for labor and materials.

FLORIDA.

Persons performing or furnishing labor or materials in the construction or repair of any building or other structure, or of additions to or upon any fixtures therein, or in the construction, repair, or operation of any railroad, canal, telegraph, or telephone line, wharf, bridge, mill, distillery, or other manufacturing work or structure have a lien upon the same and the franchise, machinery, and equipments connected therewith, and upon the land on which they stand. Provision is made that persons furnishing labor or materials under a subcontract may secure liens. Persons performing or furnishing labor on any farm, orchard, garden, etc., have also a lien thereon. One furnishing labor or materials for a sidewalk at the procurement of an adjacent owner, may have lien on the adjacent land. As against every one but the owner and persons in privity with him, notice of lien under oath must be filed within three months in office of circuit court of county where land lies. Suit must be brought within twelve months. Liens on personal property are also given by statute in many cases.

GEORGIA.

All mechanics and persons doing any work on a building, or furnishing any materials or machinery, have a lien on the same; but there must be a substantial compliance with the contract, and the claim must be recorded within three months after the work is done or materials or machinery furnished, in the clerk's office of the county where the property is situated, containing a description of the property and of the demand. Subcontractor's lien attaches only for amount due from contractor at date of notice. Mechanics and laborers also have a lien on personal property for work done in manufacturing or repairing the same, which is enforced by retaining the property, but is lost on delivering it up unless lien is recorded in clerk's office in ten days. Action to enforce a lien must be begun within twelve months after the claim is due.

HAWAII.

Any person furnishing labor or material for the construction or repair of any building, structure, railroad or other undertaking has a lien upon the same for the price agreed to be paid therefor, and upon the land upon which it is situated. A notice in writing of the lien must be filed in the office of the clerk of the circuit court where the property is situated and a copy of the notice served on the owner of the property. Notice must set forth the amount of claim, the labor or material furnished, a description of the property and any other material facts. Lien continues for forty-five days after completion of building or work. It has force only from the date of filing. Lien is enforced by suit.

IDAHO.

Liens are given for labor or materials furnished and used in the construction, alteration, or repair of any building, wharf, bridge, ditch, flume, tunnel, fence, machinery, road, aqueduct to create hydraulic power, or any other structure, or for labor on a mining claim.

Every original contractor within ninety days after the completion of his contract, and every other person, except labor or material men, claiming a lien within sixty days after the completion of the building or the repairs on the same, or after ceasing to furnish labor or materials, must file with the recorder of the county a claim containing a statement under oath of his demand, name of owner of property, if known, of his employer or person to whom materials were furnished, statement of terms and conditions of contract and description of property. Suit to foreclose lien must be commenced within ninety days after filing. A laborer or material man has only thirty days after finishing his labor or furnishing materials in which to file such notice. A lien for labor on farm may be had by filing claim within thirty days after ceasing to labor.

ILLINOIS.

All persons performing labor or furnishing materials have a lien on the real estate upon which the work is done. Before an owner makes any payment under an entire contract, he must obtain from the contractor a list of all parties performing labor or furnishing materials under such contract. As against third parties, a contractor's lien will not subsist unless a verified claim of lien is filed with the clerk of the circuit court or suit is brought within four months after completion of work, but against the owner claim may be filed or suit brought at any time within two years.

A sub-contractor must give written notice of his claim to the owner within sixty days after completion of his work, and thereupon the owner must retain from the contractor an amount sufficient to cover such claim. A sub-contractor must begin suit within four months to enforce his lien.

INDIANA.

Contractor, sub-contractor, mechanics and all other persons performing labor or furnishing materials or machinery on any structure or building whatsoever, have a lien on the same and on the land to the extent of the in-

terest of the owner for whose benefit the labor or materials were furnished. To secure the lien a notice of the claim must be filed in the recorder's office of the county where the building is, within sixty days after performing such labor or furnishing such materials or machinery. Suit may be begun to enforce the same within one year. A mechanic or tradesman has a lien on any personal property for work done. Mechanics and laborers may have a lien for labor and materials furnished to a railroad on all the property and franchises of the road.

IOWA.

Persons doing work or furnishing materials on any building or improvement have a lien on the buildings and land. There must be filed in clerk's office of the district court of the county, within ninety days after the work is done or materials furnished, by principal contractors, or within thirty days by sub-contractors, a statement under oath of the demand due, the time when labor was performed or materials furnished, and description of property charged.

To prevent payment to principal contractor, notice of filing sub-contractor's lien must be given to owner within thirty days.

KANSAS.

Any person who shall perform labor by himself or with teams, under contract with the owner, or furnish materials for erecting, altering, or repairing any building, etc., or any machinery or fixtures in the same, or any fence or sidewalk, or plant or grow any trees, vines, hedges, etc., shall have a lien on the land and buildings. Subcontractors and their employees must file statement of account with the clerk of the District Court for the county within sixty days after the completion of the buildings, etc., or the furnishing the labor or materials, and serve notice of filing on owner of the land. Contractors must file such an account within four months, and all actions to enforce liens must be begun within one year after filing lien.

KENTUCKY.

Any person who performs any labor or furnishes any material, or fixtures, or machinery in the erection, alteration, or repair of any structure, or who makes any improvement in any manner on real estate, by a contract with or written consent of the owner, has a lien on the building and land for twelve months from the completion of the work, within which time suit must be brought to enforce the same. Within six months after ceasing to labor or furnish materials, he must file in the office of the county clerk of the county where the building is, a statement of amount due, description of property, and name of the owner, and also whether the work was done or the materials furnished by contract with the owner or with a contractor or sub-contractor.

Sub-contractors and laborers may acquire a lien to the extent of balance due the principal contractor by giving notice to employer within thirty-five days after last item furnished, that they claim a lien, and filing a statement as above. Suit to foreclose the lien must be brought within twelve months.

LOUISIANA.

Liens in this State are known as privileges.

Contractors, subcontractors, artisans and other persons furnishing labor, machinery or materials for any building or structure have a privilege on such building, and the land on which it stands, attaching from the time the labor is performed, or materials furnished. Statement must be filed within forty-five days after acceptance of work by owner, and payments made to original contractor within that time are at owner's risk. Privilege may be enforced by action within one year after record. Contract for more than five hundred dollars must be in writing, signed by the parties, and recorded within twenty days after date, and owner must require bond of contractor for benefit of subcontractors, artisans, etc., to be recorded with contract.

MAINE.

Any person performing or furnishing labor or materials in erecting, altering, or repairing any house, building, or appurtenance by virtue of a contract with, or by consent of the owner, has a lien on the building and land on which it stands. If the labor or materials are not furnished by contract with the owner, he may prevent the lien for such labor or materials not yet furnished from attaching, by giving written notice that he will not be responsible for the same; and the lien is dissolved, unless, within sixty days after ceasing to labor, or to furnish materials, the claimant shall file, in the office of the town clerk where the building is, a true statement of the account, a description of the property, and the owner's name. Suit must be begun in all cases within ninety days after the last labor was performed or materials furnished. Many other liens are provided for as to which the statutes should be consulted.

MARYLAND.

Every building, machine, wharf, or bridge erected, or repaired, or improved to the extent of one-fourth of its value, is subject to lien for the payment of all debts contracted, or work done, or, except in the city of Baltimore for materials furnished for or about the same. If the contract be made with anyone but the owner, the claimant must, within sixty days after furnishing the work or materials, give notice in writing to the owner. Claimant must within six months file a statement of his demand in the office of the clerk of the Circuit Court for the county where the property is, or in Baltimore in the Superior Court. The lien continues for five years and is enforced by bill in equity or *scire facias*. Similar liens are given for labor or materials furnished for building or equipping vessels, and are in force for two years.

MASSACHUSETTS.

Any person to whom a debt is due for personal labor performed in the erection, alteration repair or removal of a building or structure upon land by virtue of agreement with, or by consent of the owner of such building or structure, or of a person having authority from or acting for him, has a lien on such building or structure and the interest of the owner thereof in the land on which it is situated, for not more than eighteen days' work performed

within forty days next prior to filing of statement hereinafter described. A person who enters into a written contract with the owner of land for the erection, etc., of a building or structure thereon, or for furnishing material therefor, may have a lien on building, etc., and owner's interest in the land, to secure payment for all labor and materials furnished under such contract, after notice of contract, including names of contractor and owner, description of land, and date when contract is to be completed, is filed or recorded in registry of deeds. Any person furnishing labor or materials under contractor or subcontractor subsequent to such filing and prior to date of termination of contract has a lien therefor. Any person furnishing labor or materials or both subsequent to date of original contract, under written agreement with contractor or subcontractor, may have lien for labor and materials furnished after filing notice of such contract, with date when it is to be completed, and actual notice to owner, but not beyond amount then due or to become due under original contract. Extension of original contract or subcontract must be filed or recorded prior to date for completion. Lien is dissolved unless statement is filed within thirty days after principal contract or subcontract is to be performed, signed and sworn to by claimants, and giving amount due, with all just credits, brief description of property, and name of owner as set forth in notice. Lien is enforced by bill in equity, which must be filed within sixty days after filing statement. Any person in interest may prevent lien for personal labor by giving bond to Register of Deeds. Contractors on public works are required to furnish bonds for labor and materials. Claims must be filed within sixty days after completion of work.

MICHIGAN.

Every person who, under any express or implied contract with the owner or lessee of any interest in real estate, or with a contractor, performs labor or furnishes materials for building, altering, repairing, or ornamenting any building, machinery, wharf, or other structure, has a lien thereon, and on the interest of the owner or lessee of the land on which improvements were made, not, however, to an amount exceeding the original contract price, nor unless notice is given that the lien will be claimed.

Any person furnishing materials or performing labor for contractor must within thirty days after commencing to labor or furnish materials, give notice to owner or lessee.

If the estate is a homestead the contract must be signed by the owner and his wife. A statement, signed and verified, setting forth the time of commencing to furnish the labor, etc., the amount due or to become due, and a description of the property, must be filed in the registry of deeds within sixty days after furnishing last of labor or materials and within ten days after filing must be served on the owner or lessee, or in his absence on agent in charge, and, in absence of both, by posting on the premises. Payments to contractor within said sixty days are at owner's risk. The lien must be enforced by suit in chancery within one year after filing statement.

MINNESOTA.

Any person performing labor or furnishing skill, material or machinery for construction, alteration, repair, or removal of any building, fixtures, bridge, wharf, fence, structure, railway, or telegraph line, etc., or grading, clearing or grubbing land, digging ditch, drain, etc., or in laying sidewalk, gutter, etc., by virtue of a contract with the owner, agent, contractor or subcontractor, may have a lien thereon and on the land not exceeding forty acres without a city or village, or one acre within such a city or village. Labor or material furnished with knowledge of owner held to be at his instance unless he gives notice to the contrary within five days. Claimant must file verified statement in writing of amount due, that same is for labor or materials furnished, and date of first and last items of account, description of property to be charged, and owner's name and notice of intention to claim lien, within ninety days from last item, in office of register of deeds of county where premises are situated—or in case of railroad, telegraph or telephone line in office of Secretary of State. Lien must be enforced by suit within one year from date of last item.

MISSISSIPPI.

Every building, bridge, machinery, or fixtures for manufacturing purposes, railroad, or water-craft, and every piling or enclosure is liable for the payment of any debt contracted and owing for labor performed or materials furnished about the erection, alteration, or repair of the same, and the debt is a lien on the building or structure and the land on which it is, not to exceed one acre if in the country. The lien takes effect from the time of filing the contract in the office of the chancery clerk for the county where the land is, or from the commencement of suit to enforce it, and such suit must be begun within twelve months after money claimed is due and payable. Laborers, material men and subcontractors, by giving written notice to owner, may bind amount due to contractor. Where bond has been given by contractor to owner it enures to benefit of laborers and materialmen, who may sue on it if no suit be brought by obligee within six months, provided suit is brought within one year.

MISSOURI.

Every person performing any work or furnishing any materials, fixtures, engines, boilers, or machinery for any building, erection, or improvement on land, or for repairing the same, has a lien on the building and land belonging to the owner on which the building is, to the extent of one acre, or if in a city, town, or village, on the lot and building. Every original contractor within six months, every journeyman and day-laborer within sixty days, and every other person within four months, must file with the clerk of the circuit court for the county where the property is a true account of his demand, a description of the property, and the owner's name, and action to enforce the lien must be begun within ninety days after filing such account. Subcontractor or laborer must give owner ten days' notice before filing lien.

MONTANA.

Every person performing labor or furnishing materials, machinery, or fixtures for any building, structure, bridge, flume, canal, ditch, mining claim, quartz lode, city or town lot, ranch, railroad, telegraph, telephone, electric light line, gas or water-works or plant, or other improvements, may have a lien thereon, by filing within ninety days with the clerk of county where property is situated, a statement under oath of amount due, and description of property. Such liens take precedence of any prior lien, encumbrance, or mortgage. Suit must be commenced within one year.

A similar lien is given on leasehold for oil or gas purposes, and on pipelines, for labor, materials or machinery performed or furnishing in digging or operating oil or gas wells, under contract with owner, contractor or sub-contractor.

NEBRASKA.

All persons performing labor or furnishing materials, or machinery for erecting, repairing, equipping, or removing any building or appurtenance have a lien to secure payment for the same, on the building or appurtenance and lot on which it stands. The claimant must make an account in writing, under oath, and within four months from the time of doing the work or furnishing the materials must file the same in the office of the clerk of the county where the work was done, and the lien continues for two years after filing claim. Sub-contractor must file claim within sixty days.

NEVADA.

Every person performing labor upon, or furnishing materials of the value of five dollars in constructing or repairing any building or superstructure, or performing labor on any railroad, tramway, toll-road, canal, water ditch, flume, aqueduct, reservoir, mine, or tunnel, or in the improvement of any building lot in a city or town, has a lien on the same and on the land for his work, labor, or materials. Owner must file affidavit of date of completion of work. Person claiming lien must, not less than ten days after completion of contract, etc., and not more than fifty days after filing of owner's affidavit, or performance of labor on mining claim, file in the record office for the county where the land is a statement under oath of his demand, the owner's name, terms of contract and description of the property. Suit must be begun within six months after filing the claim.

NEW HAMPSHIRE.

Any person who, by himself or others, performs labor or furnishes materials to the value of fifteen dollars or more, for erecting, altering, or repairing a house, or other building or appurtenance, by virtue of a contract with the owner, may have a lien on the same, such lien to be secured by attachment, and to continue ninety days. A subcontractor may have a similar lien by giving notice in writing to the owner or person having charge of the property of his intention to claim a lien, and furnishing to the owner once in thirty days an account of labor performed or materials furnished. Lumberers and railroad subcontractors have a like lien, on giving similar notice and account.

NEW JERSEY.

Every building constructed, erected, or repaired, and machinery or fixtures put into any building, are liable for the payment of all debts contracted and owing to any person for labor performed or materials furnished for the erection or repair of such building, machinery, or fixtures. But if the work was done by contract, the building is liable to the contractor alone, provided the contract, or a copy, is filed in the county clerk's office before any work was done or materials furnished. The claimant must, within four months after performing the labor or furnishing the materials, file in the office of the county clerk a statement containing a description of the building, the owner's name, and the name of the person contracting the debt, the time of beginning the work, and a bill of particulars, and also issue a summons in a suit to enforce lien, and suit must be diligently prosecuted within one year. If labor or material man is not paid by master workmen, contractor or subcontractor he may notify owner, who may pay his claim, unless within five days master workmen, etc., notifies claimant to establish his claim by judgment, in which case claimant must bring suit within sixty days of the notice. There are special provisions for liens in public improvements.

NEW MEXICO.

Any person furnishing labor or materials for the erection or repair of a building has a lien thereon and on the land on which it stands. Original contractor must file in office of county clerk a statement of account, under oath, and description of property, within ninety days after completion of contract. Other claimants must file similar statement within sixty days after work done or material furnished. Suit must be brought within one year from time of filing claim of lien.

NEW YORK.

Any person who, with the consent of the owner, or his agent, or any contractor or subcontractor, performs services or furnishes materials for the improvement of real property may have a lien on the premises to secure the payment of his claims. A notice of this lien, including name and residence of lienor, name of owner of property, name of employer, statement of labor or material furnished, including agreed price or value, amount unpaid, time of first and last items of labor and materials, and description of property, verified by the claimant or his agent, may be filed in the county clerk's office during the progress of the work, or within four months after ceasing to work or furnish materials. Action must be brought within one year after such filing, and notice of action filed with county clerk. Special provision is also made for liens for labor and materials furnished on public improvements, against the State and municipal corporations.

NORTH CAROLINA.

Every building built, rebuilt, repaired, or improved, together with the lot on which the building is, and every lot, farm, or vessel, is subject to a lien for the payment of all debts contracted for work or materials furnished about the same. Notice of the lien must be filed in the office of the clerk of the Superior Court of the county within twelve months after the labor is

completed or materials furnished, specifying the labor or materials furnished and the time. Suit must be brought within six months after filing lien. Sub-contractors, laborers, and material men can take a lien by notifying owner of property before he has settled with the contractor, and filing notice as above. Agricultural laborers and persons engaged in loading vessels also have liens. Mechanics and artisans have a lien on personal property made or repaired by them. If not paid within 30 days if the value of the article does not exceed fifty dollars, or ninety days if over fifty, they may sell at auction, after two weeks' notice.

NORTH DAKOTA.

Every person performing labor or furnishing materials, machinery, or fixtures for any building, erection, or other improvement upon land, by virtue of any contract with the owner, his agent, trustee, contractor, or subcontractor, or with his consent, may have a lien on such building, etc., and the land on which it is situated. When materials, etc., are furnished to contractor or subcontractor notice must be given to owner. Notice of intention to claim lien for materials must be filed with clerk of district court of county, and lien will take precedence only over conveyances filed thereafter. Notice of lien, with written consent of owner if lien is for materials, must be filed with clerk of district court within ninety days after all labor is performed or materials furnished. If owner so demands, suit to enforce lien must be brought within thirty days after demand, otherwise within six years after date of last item.

OHIO.

Any person performing labor or furnishing machinery, materials or fuel for constructing or repairing any vessel, or any building, bridge or other structure, or any oil derrick, oil tank, oil or gas pipe line, or digging, drilling or operating any gas, oil or other well, or furnishing tile for drainage, by virtue of a contract express or implied with the owner or agent, or as subcontractor, laborer or material man, has a lien on structure and interest of owner in land. One furnishing labor or materials on a road, drain, etc., may have similar lien on interest of owner in the land and that abutting. Statute provides for notice to owner of claims for liens by material men or laborers within thirty days after beginning to furnish material or perform labor; and requires contractor to give owner statement containing names of all subcontractors, workmen and material men, and amounts due them, before payments are made to contractor; and authorizes him to retain and pay such amounts, holding him responsible for sixty days after completion of work, for all amounts due, but not beyond amount of original contract. Every person claiming lien must within sixty days after furnishing last labor or materials file in office of county recorder affidavit showing net amount due, description of property, name of persons to whom labor or materials were furnished and name of owner, if known, and within thirty days thereafter serve copy on owner, or, if not found in county, post same on premises. Owner may require him to bring suit; if not brought within sixty days lien is lost. Liens have precedence over all titles given or recorded after commencement of construction, etc.

OKLAHOMA.

Any person performing labor or furnishing material in building, altering, or repairing building or structure, including fences, sidewalks, etc., or in putting in machinery, planting trees, etc., under contract with the owner of land, may have a lien on structure and land. Statement under oath must be filed with clerk of district court within four months, setting forth amount claimed, the items, names of owner, and claimant, and description of property. Statement by subcontractor must be filed within sixty days and notice served on owner. Suit must be brought within one year after filing lien. There is similar lien on gas and oil pipe lines and oil and gas leaseholds.

OREGON.

Any person who, at the instance of the owner or his agent, performs any labor, or furnishes or transports any materials for the construction or repair of any building, wharf, bridge, ditch, flume, tunnel, fence, machinery or any structure, has a lien on the same and the lot on which it stands. Persons furnishing materials or supplies must, within five days after date of first delivery, deliver or mail to owner statement that he has commenced to deliver materials, etc., with name of person ordering same, and claim a lien for all materials which he may furnish, and on demand furnish owner a list of all materials, etc., furnished and their prices. An original contractor must file in the office of the county clerk, within sixty days after the completion of the building or repairs, a notice of his intention to claim a lien, specifying the amount due and the property. A laborer or subcontractor must file notice within thirty days. The lien will not be binding for more than six months after such filing, unless suit is brought. Notice must be given to owner seven days before commencing suit to foreclose lien. All persons furnishing fuel or materials to a contractor with railroad corporation may secure a lien on the property of the latter, but not to amount exceeding that due by the corporation to the contractor.

PENNSYLVANIA.

Under Act of 1901 buildings and land are subject to liens for labor and materials, exceptions, however, existing in certain cases, i. e., where furnished for public purposes, or where the land is held by trustee of lunatic or minor children etc. No claim of lien for repairs less than one hundred dollars is valid, nor in case of subcontractor unless also written notice of intention to file claims be given to owner before completion of work or furnishing last of materials. Where tenancies or leasehold estates are involved, or where it is a case of alterations or repairs, the claim must be filed in the court of common pleas within three months after completion of contract; in other cases within six months. Where a subcontractor has three months within which to file his claim he must give the owner written notice and a sworn statement of the claim at least thirty days before such claim is filed, and where he has six months, the notice and statement must precede the filing of the claim at least forty-five days. *Scire facias* must be issued within two years, and judgment rendered thereon within five years.

THE PHILIPPINES.

There is no provision for mechanics' liens on real estate.

PORTO RICO.

The law does not provide for mechanics' liens on real estate.

RHODE ISLAND.

Every building or other improvement erected or repaired, by contract with or consent of the owner, is subject to a lien for all work done or materials furnished in the construction or repair of the same. Persons employed by contractors or subcontractors have lien for work done or labor furnished within forty days next preceding time of notice to owner, and within ten days after giving such notice must record copy with town clerk or recorder of deeds. Persons furnishing materials must give notice to owner, and record same in town clerk's office within sixty days after materials are placed on land.

To enforce lien, the claim, including an account and a description of property, must be filed in the office of the town clerk of town where land is situated by subcontractors and workmen within ten days after such notice, others within four months after default in any payment, if work is done by written contract, or within six months after commencement of work under verbal contract. A petition in equity must be filed in the clerk's office of the Supreme Court within twenty days after the filing of the claim.

SOUTH CAROLINA.

Any person to whom a debt is due for labor performed or materials furnished and actually used in the erection, alteration, or repair of any building or structure on real estate, by virtue of a contract with or consent of the owner or his agent, has a lien on the buildings and land for his pay. A subcontractor may also have such lien by notifying the owner and the original contractor before furnishing labor or materials of his intention to claim lien, but the whole amount of such liens must not exceed amount of lien of original contractor. If the owner is not the contracting party, he may prevent any lien from attaching by giving written notice that he will not be responsible for the debts of the contractor. The claimant, within ninety days after ceasing to labor or furnish materials, must file in the office of the register of mesne conveyances of the county a statement of his account, with a description of the property and the owner's name. Suit must be begun within six months after ceasing to labor, or furnish materials.

SOUTH DAKOTA.

Every person doing labor upon, or furnishing materials, machinery, or fixtures for any building or other improvement on land, by virtue of any contract with the owner, or his agent, trustee, contractor, or subcontractor, may have a lien on the land and the buildings, etc. Owner may retain from contractor and pay amounts due other lienors. Lien attaches at date of first item of labor or materials, or as against *bona fide* purchaser, etc., at actual beginning of improvement, but contractor may secure lien by filing statement

of contract with clerk of circuit court. Lien ceases at end of ninety days after last item furnished unless verified claim be filed with clerk of circuit court giving amount due and for what purpose, names of claimant and person for whom labor, etc., was furnished, dates of first and last items, description of property and name of owner. Suit must be brought within six years after date of last item, or thirty days after demand by owner.

TENNESSEE.

There is a lien on any lot of land upon which a house has been built or repaired, or fixtures or machinery furnished or erected, or improvement made by special contract with the owner or his agent in favor of all persons doing any work or furnishing any materials on or about the same. If a mortgagee has written notice of a contract to furnish such labor and materials before the work is begun and fails to object within ten days, the lien will take precedence over the mortgage. The lien includes the buildings on the land, and continues for one year after completion of the work. Subcontractors and workmen must, at the time of beginning to work, give notice to the owner of their intention to claim a lien, or they may, within thirty days after building is completed, or their contracts expire, notify in writing the owner that lien is claimed, and such lien shall thereupon have precedence over all other liens for ninety days, providing statement be filed with county register.

TEXAS.

Any person laboring or furnishing materials, machinery, fixtures or tools for erection of any house or improvement, or repair of any building or improvement, or construction or repair of levee or embankment, has a lien thereon and on land. Every original contractor within four months, and all others within thirty days after indebtedness accrued must file with county clerk copy of contract, if in writing, or if unwritten, itemized account under oath, together with description of building, etc., and land. Persons furnishing material to contractor or subcontractor must give owner written notice of items furnished and amounts due, or within ninety days file itemized account with county clerk. Subcontractors and laborers must give owner ten days' notice before filing lien. Owner must retain ten per cent. of contract price or value of building, etc., for thirty days after completion of work to meet claims of workmen, but is in no case liable beyond contract price.

UTAH.

Any person who furnishes labor or materials in the construction or repair of any building, structure, or improvement on land, or in working a mine, has a lien thereon, provided he files with the county recorder within sixty days after the completion of his contract, if an original contractor, or forty days after ceasing to labor or furnish materials, etc., if a subcontractor, a claim, under oath, containing a statement of his demand after deducting all credits, name of owner if known, and employer, the terms of the contract, and description of property. Suit for foreclosure must be commenced within one year after completion of contract, or suspension of the work for thirty days.

On contract for \$500 or more owner must obtain bond from contractor for benefit of persons entitled to liens.

VERMONT.

When any contract is made, in writing or otherwise, for the erection, repair, or alteration of any building, or for furnishing any materials about the same, the person proceeding under the contract has a lien on the house and land, which continues for three months after payment of the claim is due, provided the claimant filed in the clerk's office of the town where the building is, a memorandum signed by him showing his claim, and commences an action to enforce the same within said three months. The property on which lien is claimed is to be attached within five months after judgment, and copy of record filed in town clerk's office, whereupon lien becomes one in nature of mortgage, and is foreclosed as such. Subcontractor may have similar lien not exceeding amount due original contractor by filing lien and giving notice to owner. Mechanics have a lien on articles repaired.

VIRGINIA.

All persons performing labor or furnishing materials for the construction or improvement of buildings or other structures, or repair thereon, if ordered by owner or his agent, have a lien thereon, and on so much land as is necessary to the convenient use thereof. A general or a subcontractor or material man must, within thirty days after completion of building or furnishing materials, file in the county clerk's office (or, if the property be in the City of Richmond, in the clerk's office of the chancery court), a sworn statement of account, with a description of the property, and claim a lien thereon. Subcontractors or material men must, also, within thirty days, notify in writing the owner of the property or his agent, and the owner will be liable to the subcontractor or materialman for so much of his claim as does not exceed the amount due by the owner to the general contractor at the time notice is given. Subcontractor may, before performing labor or furnishing materials to general contractor, give owner written notice of intention to claim lien, stating probable amount, and within thirty days after structure is completed give to owner and contractor a verified statement of account, and owner shall thereupon be personally liable to extent of amount then due contractor. Suit to enforce lien must be brought within six months.

WASHINGTON.

Mechanics and material men may have liens on buildings and lands on which they stand, by filing notice thereof, within ninety days of the completion of the work or furnishing materials, with the county auditor, stating amount due above all set-offs. Suits must be brought within eight months after such filing. Lumbermen may have a similar lien on logs and timber by filing notice of lien in county auditor's office within thirty days after debt accrued, and bringing suit thereon within eight months thereafter. Persons performing or furnishing labor in orchards or orchard business have lien on same; claim must be filed within forty days after close of work and suit within eight months thereafter. Farm laborers have lien on crops if filed

within forty days. Persons performing labor for any person or corporation, in the operation of any railway, canal, or transportation company, or any water, mining, or manufacturing company, saw mill, etc., shall have a lien upon the franchise, earnings, and property of such person or corporation for labor performed during the six months preceding the filing of his claim with the county auditor, which must be done within ninety days after completion of such labor.

WEST VIRGINIA.

Every person erecting, constructing, altering, removing or repairing any building or other structure, or improvement appurtenant thereto, under contract with the owner, or performing labor or furnishing materials, machinery or supplies for the same under contract with the owner, contractor or subcontractor, has lien thereon and on the interest of owner in the land. Lien attaches when labor or materials begin to be furnished. Contractor and workmen and material men under direct contract with owner must file in office of clerk of circuit court for the county where land lies, within ninety days after completion of contract or furnishing last labor or materials, notice of lien and statement of claim under oath. Subcontractors, and workmen and material men under contract with contractor or subcontractor, must within sixty days after completion of subcontract, etc., serve similar notice on owner. If owner be non-resident or not found, notice must be published two weeks in newspaper published in the county, and posted on the premises. Itemized statement of labor or materials must be given to owner within ten days after written demand. Workman or materialman employed by contractor may before beginning work or furnishing materials notify owner of intention to claim lien if not paid; in which case he need not file the sixty days' notice of lien unless required by owner within sixty days. Owner may limit liability under contract to amount of contract, by recording same in clerk's office, and requiring contractor to give bond for payment of claims for labor and materials. Liens for labor and materials have precedence over lien of contractor. Suit to enforce lien must be commenced within six months after filing notice, such suit enuring to benefit of all holders of liens. Workmen performing labor for any incorporated company have lien on all real and personal estate of company, provided sworn notice of lien be filed in clerk's office within ninety days after ceasing to labor.

WISCONSIN.

Every person who as principal contractor, architect, civil engineer or surveyor performs or furnishes work, material, plans or specifications for the erection, construction, repair or removal of any building, structure, bridge, wharf, etc., or machinery annexed to the freehold, has a lien thereon and on interest of the owner in the land, not exceeding forty acres, or in a city or incorporated village the lot used for such building, etc. Any person other than a principal contractor furnishing labor or materials may have similar lien, but must within thirty days after beginning work or furnishing material give notice to owner that he has been employed to furnish labor or material on land described, and within sixty days after last work performed or materials furnished file in office of clerk of circuit court, with a copy of the

notice, claim for lien, setting forth that he has been employed by contractor to perform or furnish labor or materials, with statement of labor or materials furnished, and amount owing therefor. Laborers and mechanics employed by contractor or subcontractor are not required to give the thirty days' notice. In other cases the lien must be filed within six months after date of last charge. Action must be brought within one year from such date, unless within thirty days before expiration of year time is extended for another year by annexing to claim on file affidavit showing claimant's interest in the property by virtue of such lien.

WYOMING.

Any person performing labor or furnishing materials, fixtures, or machinery for any building, erection, or improvement on land or for repairing the same, may have a lien on the land to the extent of one acre, or, if in a city, town, or village, on the lot on which the building is situated. Every original contractor within four months, and every subcontractor, journeyman, or laborer within ninety days, after indebtedness accrues, must file with the register of deeds of the county an account, under oath, of the amount due after allowing for credits, a description of the property, and name of owner and contractor, if known; but original contractors cannot file lien until sixty days after completion of contract. Persons other than original contractors must, ten days before filing lien, give written notice of the claim and amount thereof. Proceedings to foreclose lien must be begun within six months.

CHAPTER XXXVIII.

BANKRUPTCY.

THE CONSTITUTION of the United States provides that "Congress shall have power to establish uniform laws on the subject of bankruptcies throughout the United States." The several States may pass laws on the subject when there is no national law, but as soon as a national law is passed, and while it continues in force, it wholly supersedes and suspends every State law on the subject. National Bankruptcy Acts, with intervals when the State insolvency laws were in force, were passed in 1809, 1841, 1867 and 1898. The law of 1898 as amended by subsequent statutes is the one now in force.

Exclusive jurisdiction in all matters of bankruptcy is vested in the District Courts of the United States, subject to appeals to the Circuit Court of Appeals and to the Supreme Court. They

may adjudge persons bankrupt who have had their principal place of business, or resided or had their domicile, within their respective territorial jurisdictions for the preceding six months, or the greater part thereof, or who do not have their principal place of business, residence or domicile within the United States, but have property within their jurisdictions, or who have been adjudged bankrupt by courts of competent jurisdiction without the United States and have property within their jurisdiction.

Proceedings in bankruptcy may be voluntary or involuntary; the difference in the two cases relating only to the steps taken to bring about the adjudication. When a person has once been adjudicated a bankrupt, the subsequent proceedings as to proof of claims, election of trustee, and distribution of the bankrupt's estate are the same in both cases.

"Acts of bankruptcy by a person consist of his having, (1) conveyed, transferred, concealed or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay or defraud his creditors or any of them; or (2) transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having, at least five days before a sale or final disposition of any property affected by such preference, vacated or discharged such preference; or (4) made a general assignment for the benefit of his creditors, or being insolvent, applied for a receiver or trustee of his property, or because of insolvency a receiver or trustee has been put in charge of his property under the laws of a State, of a Territory or of the United States; or (5) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground."

Any person or corporation except a municipal, railroad, insurance or banking corporation, may file a voluntary petition and be adjudged a bankrupt.

Any natural person, except a wage earner, or person engaged chiefly in farming or the tillage of the soil, any unincorporated company and any moneyed, business, or commercial corporation except a municipal, railroad, insurance or banking corporation, owing debts to the amount of one thousand dollars or over may be adjudged a bankrupt in involuntary proceedings.

A partnership may be adjudged a bankrupt either in voluntary or involuntary proceedings. In such case a court having jurisdiction over one of the partners may have jurisdiction over all and the administration both of the partnership and the individual estates. Separate accounts are kept of partnership and individual property, and the net proceeds of partnership property applied to the payment of partnership debts, and that of individual property to individual debts; the surplus, if any, of the partnership estate after payment of partnership debts being transferred to the estates of the individual partners, and that of the individual partners to the partnership estate. If one or more of the partners, but not all, are adjudged bankrupt, and there be no proceedings against the firm, the partnership property is not administered in bankruptcy, unless by consent of the other partners, but such other partners are required to settle the partnership business as soon as practicable and account for the interest of the bankrupt partners.

An involuntary petition may be filed at any time within four months after the alleged act of bankruptcy, by three or more creditors who have provable claims amounting in the aggregate, in excess of the value of any securities, to five hundred dollars. If the whole number of creditors be less than twelve, one whose claim equals that amount may file such a petition. In computing the number of such creditors, creditors employed by the debtor at the date of filing the petition, or related to him by consanguinity or affinity within the third degree as determined by common law, and who have not joined in the petition are not included. Other creditors may afterwards join in or oppose the petition. A petition, whether voluntary or involuntary, once filed, cannot be withdrawn without notice to all creditors.

On the filing of the petition notice is given to the debtor, and he may contest the allegations made in it, and, if he so desires, have them passed upon by a jury.

On sufficient cause shown, and the filing of a bond to cover any damages the debtor may suffer, the court may in its discretion appoint a receiver to take charge of the debtor's property and business until the question of adjudication is decided, or until the appointment of a trustee.

Classified schedules of the debtor's assets and liabilities are filed with the petition in voluntary proceedings, and immediately

after the adjudication he is required to file similar schedules in involuntary proceedings.

By the adjudication all levies, judgments and attachments obtained within four months prior to the date of filing the petition are vacated except as to bona fide purchasers for value without notice.

Upon the adjudication being made, the case is referred by the court to one of the official Referees in Bankruptcy, who has charge of the subsequent proceedings in the settlement of the bankrupt's estate, subject to the supervision of the court.

At the first meeting of the creditors, which is presided over by the Referee, the creditors make proof of their claims, and choose a trustee. They may attend personally, or be represented by an attorney-at-law, or by an attorney in fact, duly authorized in writing. Proof of claims is made in writing. Forms for this purpose will be found at the end of this chapter. Whenever a claim is founded upon an instrument in writing—as for example, a promissory note—it must be filed with the proof of claim. After the claim is allowed or disallowed it may be withdrawn, with the permission of the Court, by leaving a copy on file. The bankrupt is required to be present at this meeting, and may be examined in relation to his business affairs at the request of any creditor. Claims of secured creditors or of those having a priority are allowed only to the extent of the excess over such security or priority. Claims of creditors who have received preferences, or to whom conveyances or transfers of property have been made by the bankrupt within four months before the filing of the petition with intent to hinder, delay or defraud his creditors, are not allowed unless the creditor surrenders such preference, conveyance, etc.

A person shall be deemed to have given a preference if, being insolvent, he has within four months before filing the petition, or after such filing and before the adjudication, procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable one of his creditors to obtain a greater percentage of his debt than any other creditors of the same class. If the person so benefited had reasonable cause to believe that such transaction would

effect a preference, it may be avoided by the trustee and the property or its value recovered.

After the proof and allowance of claims one or three trustees are chosen by a majority in number and value of the creditors present in person or by attorney. If the creditors fail to elect an appointment is made by the Referee.

The trustee is the official administrator of the bankrupt's estate. Upon his appointment and qualification all the property and rights of action of the bankrupt—except such as are exempt under the laws of the State,—including documents relating to property, interests in patents, copyrights and trade-marks, powers which the bankrupt might have exercised for his own benefit, and property transferred by the bankrupt in fraud of his creditors—vest in the trustee by operation of law as of the date of the adjudication.

It is the duty of the trustee to collect and reduce to money as speedily as possible all the bankrupt's property and estate vested in him, or of which he has a right of recovery. He is not, however, obliged to accept any property which by reason of valid liens or mortgages, or for any other reason, is of no value to the estate. So of a leasehold estate. Unless the lease by its terms becomes null and void on the bankruptcy of the lessee, the trustee may, at his election, refuse to accept it, or he may sell and assign it, or he may enter upon and occupy the leased premises. But if he elects to accept the lease, he takes it subject to all its burdens, and becomes liable to the landlord for rent subsequently accruing, and for the performance of the other covenants of the lease. He may, however, at any time relieve himself of further liability by assigning the lease, even to one known to be insolvent. Any property or rights of action which the trustee declines to accept revert to the bankrupt.

While all the bankrupt's rights of action relating to property or damage to property vest in the trustee, rights of action for personal injuries—as for example for assault and battery or libel or slander—do not pass to the trustee, but remain in the bankrupt, unless such rights of action be reduced to a judgment before the bankruptcy.

For the purpose of settling the estate very broad powers are given to the trustee. In case of doubt he can always apply to the Referee or to the Court for instructions. With relation to the

property in his hands he is bound by the ordinary obligations of trustees. He cannot buy it in for himself, or acquire a title to it by buying up the claims of creditors. If he makes any profit he must account for it to the estate.

The trustee must report the condition of the estate from time to time to the Court, must pay such dividends to creditors as may be declared by the Referee, and at the final meeting of the creditors make a detailed report of his administration of the estate.

Proof of claims may be made at subsequent meetings within one year after the adjudication; or if liquidated by litigation, and judgment is rendered within thirty days before or after the expiration of such term, within sixty days after the rendition of such judgment. Such subsequent proof cannot, however, operate to disturb the effect of any dividend already declared.

Creditors are entitled to ten days notice of all examinations of the bankrupt, all hearings for confirmation of composition, all meetings of creditors, all proposed sales of property, the declaration and time of payment of dividends, filing of trustee's final accounts and time and place when and where they will be passed upon, the proposed compromise of any controversy, and the proposed dismissal of proceedings. On application for the bankrupt's discharge there must be thirty days' notice.

Before the payment of any dividend to creditors, all taxes due to the United States, the State, county or municipality must be paid; then debts entitled to priority in the following order: (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) filing fees paid by creditors in involuntary cases, and the expenses of recovery, by creditors, of property for the benefit of the estate; (3) the cost of administration, including one attorney fee for professional services rendered, to petitioning creditors in involuntary cases, to the bankrupt in involuntary cases while performing duties prescribed by the Act, and to the bankrupt in voluntary cases, as the court may allow. (4) Wages due to workmen, clerks, traveling or city salesmen, or servants, which have been earned within three months before the commencement of proceedings, not to exceed three hundred dollars each; and (5) debts owing to any person who by the laws of the States or the United States is entitled to priority.

A bankrupt may offer, either before or after adjudication, terms of composition to his creditors, after, but not before, he

has been examined in open court or at a meeting of his creditors, and has filed in court the schedule of his property and the list of creditors required to be filed by bankrupts.

The application for confirmation of composition must, before filing, be accepted in writing by a majority in number and amount of the creditors; and the consideration to be paid to the creditors and the amount necessary for payment of debts entitled to priority and the costs of proceedings must be deposited, subject to the order of the judge. After notice to creditors and hearing on any objections, the composition will be confirmed if the judge is satisfied that: "(1) It is for the best interests of the creditors; (2) the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge; and (3) the offer and its acceptance are in good faith and have not been made or procured except as provided in the Act, or by any means, promises or acts therein forbidden." Upon the confirmation of a composition the consideration is distributed as the judge directs and the case demands. The confirmation of a composition discharges the bankrupt from his debts, other than those agreed to be paid by the terms of the composition and those not affected by a discharge, and the bankrupt's property and estate revert in him.

The bankrupt may apply for his discharge after the expiration of one month and within the next twelve months subsequent to the adjudication, or, if unavoidably prevented, he may do so within, but not after, the next six months. Objection to the discharge may be made by any party in interest on any one or more of the following grounds: "(1) That the bankrupt has committed an offense punishable under the Act by imprisonment," viz: having knowingly concealed while bankrupt, or after his discharge, from his trustee any of the property belonging to his estate in bankruptcy, or having made a false oath or account in, or in relation to, any proceeding in bankruptcy; "or, (2) with intent to conceal his financial condition, destroyed, concealed or failed to keep books of account or records from which such condition might be ascertained; or (3) obtained money or property on credit upon a materially false statement in writing made by him to any person or his representative for the purpose of obtaining credit from such person; or (4) at any time subsequent to the first day of the four months immediately preceding the filing

of the petition transferred, removed, destroyed or concealed, or permitted to be removed, destroyed or concealed, any of his property, with intent to hinder, delay or defraud his creditors; or (5) in voluntary proceedings, been granted a discharge in bankruptcy within six years; or (6) in the course of proceedings in bankruptcy refused to obey the lawful order of, or to answer any material question approved by, a Court."

A discharge may be revoked, on application of any party in interest, within one year if on trial it appears that it was obtained through fraud of the bankrupt, of which the petitioner acquired knowledge after the discharge, and that the discharge was not warranted by the actual facts. A composition may be set aside on like grounds within six months after confirmation.

"A discharge in bankruptcy releases a bankrupt from all of his provable debts, except such as (1) are due as a tax levied by the United States, the State, county, district or municipality in which he resides; (2) are liabilities for obtaining property by false pretenses or false representations, or for wilful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for criminal conversation; or (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor, if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity."

VOLUNTARY ASSIGNMENTS.

Voluntary assignments for the benefit of creditors are of common occurrence, and are regulated by statute in many of the States. The terms of these assignments vary greatly. In some States they may provide that certain creditors may be preferred and their claims paid before others; in other States, as in Massachusetts, all creditors must be placed upon the same footing, and the insolvent's estate must be settled on lines substantially like those of the Bankruptcy Act.

While the making of such an assignment is of itself under the statute an act of bankruptcy, and the assignment is liable to be set aside by bankruptcy proceedings at any time within four

months, it is frequently done to preserve the insolvent's estate, by preventing attachments which would shut down his business, until a meeting of the creditors can be held, and they can decide in what way the debtor's affairs shall be settled. It often happens, also, that by reason of the greater freedom of action permissible under an assignment, an insolvent estate can be settled in this way with less delay and expense than it would in bankruptcy, and so is preferred by the creditors.

A form of assignment will be found at the end of this chapter, which can be modified to suit the circumstances of any particular case.

(337.)

General Letter of Attorney-in-Fact, When Creditor Is Not Represented by Attorney-at-Law.

In the District Court of the United States for the _____ District of _____

In the matter of

Bankrupt.

} In Bankruptcy.

To A. B.: C. D.

I, _____ of _____ in the county of _____ and State of _____, do hereby authorize you, or any one of you, to attend the meeting or meetings of creditors of the bankrupt aforesaid at a court of bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said court in said matter, or at such other place and time as may be appointed by the court holding such meeting or meetings, or at which such meeting or meetings or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion, for me and in my name to vote for or against any proposal or resolution that may be then submitted under the acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of the said bankrupt, and for me to assent to such appointment of trustee; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due me under any composition, and for any other purpose in my interest whatsoever, with full power of substitution.

In Witness Whereof, I have hereunto signed my name and affixed my seal the _____ day of _____, A. D. 19____

Signed, sealed and delivered in the presence of

(Seal.)

Acknowledged before me this _____ day of _____, A. D. 19____

[Official character.]

(338.)

Special Letter of Attorney in Fact.

In the matter of

Bankrupt.

} In Bankruptcy.

To A. B.: C. D.

I hereby authorize you, or any one of you, to attend the meeting of creditors in this matter, advertised or directed to be holden at _____, on the _____ day of _____, before _____, or any adjournment thereof, and then and there for me and in my name to vote for or against any proposal or resolution that may be lawfully made or passed at such meeting or adjourned meeting, and in the choice of trustee or trustees of the estate of the said bankrupt.

In Witness Whereof, I have hereunto signed my name and affixed my seal the _____ day of _____.

(Seal.)

Signed, sealed and delivered in presence of

Acknowledged before me this _____ day of _____, A. D. 19____

[Official character.]

(339.)

Proof of Unsecured Debt.

In the District Court of the United States for the _____ District of _____

In the matter of

Bankrupt.

} In Bankruptcy.

At _____, in the district of _____, on the _____ day of _____, A. D. 19____, came _____ of _____, in the county of _____ in said district of _____, and made oath, and says that _____ the person by [or against] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent in the sum of _____ dollars;

that the consideration of said debt is as follows: _____; that no part of said debt has been paid [*except* _____]; that there are no set-offs or counterclaims to the same [*except* _____]; and that deponent has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever.

Creditor.

Subscribed and sworn to before me this _____ day of _____, A. D. 19____.

[*Official character.*]

For proof of a secured debt the form is the same, except the last clause, for which substitute:

"and that the only securities held by this deponent for said debt are the following: _____."

(340.)

Proof of Debt Due Corporation.

In the District Court of the United States for the _____ District of _____

In the matter of _____

Bankrupt.

} In Bankruptcy.

At _____, in the district of _____, on the _____ day of _____, A. D. 19____, came _____ of _____ in the county of _____ and State of _____, and made oath and says that he is (*president or other officer*) of the _____, a corporation incorporated by and under the laws of the State of _____, and carrying on business at _____ in the county of _____ and State of _____, and that he is duly authorized to make this proof, and says that the said _____, the person by [*or against*] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said corporation in the sum of _____ dollars; that the consideration of said debt is as follows: _____; that no part of said debt has been paid [*except* _____]; that there are no set-offs or counterclaims to the same [*except* _____]; and that said corporation has not, nor has any person by its order, or to the knowledge or belief of said deponent, for its use, had or received any manner of security for said debt whatever.

[*President, etc.*] of said Corporation.

Subscribed and sworn to before me this _____ day of _____, A. D. 19____.

[*Official character.*]

(341.)

Proof of Debt by Partnership.

In the District Court of the United States for the _____ District of _____

In the matter of _____

Bankrupt. _____

} In Bankruptcy.

At _____, in the district of _____, on the _____ day of _____, A. D. 19____, came _____, of _____, in the county of _____, in said district of _____, and made oath and says that he is one of the firm of _____, consisting of himself, and _____ of _____ in the county of _____ and State of _____; that the said _____, the person by [*or against*] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to this deponent's said firm in the sum of _____ dollars; that the consideration of said debt is as follows: _____; that no part of said debt has been paid [*except* _____]; that there are no set-offs or counterclaims to the same [*except* _____]; and this deponent has not, nor has his said firm, nor has any person by their order, or to this deponent's knowledge or belief, for their use, had or received any manner of security for said debt whatever.

Creditor.

Subscribed and sworn to before me this _____ day of _____, A. D. 19____.

[Official character.]

(342.)

Proof of Debt by Agent or Attorney.

In the District Court of the United States for the _____ District of _____

In the matter of _____

Bankrupt. _____

} In Bankruptcy.

At _____, in the district of _____, on the _____ day of _____, A. D. 19____, came _____, of _____, in the county of _____, and State of _____, attorney [*or authorized agent*] of [*the creditor*] of _____ in the county of _____ and State of _____, and made oath and says that _____, the person by [*or against*] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to the said _____ in

the sum of _____ dollars; that the consideration of said debt is as follows: _____; that no part of said debt has been paid [*except* _____]; and that this deponent has not, nor has any person by his order, or to this deponent's knowledge or belief, for his use had or received any manner of security for said debt whatever. And this deponent further says that this deposition cannot be made by the claimant in person because _____, and that he is duly authorized by his principal to make this affidavit, and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated, and that such debt, to the best of his knowledge and belief, still remains unpaid and unsatisfied.

Subscribed and sworn to before me this _____ day of _____, A. D. 19____

[*Official character.*]

(343.)

Assignment for Benefit of Creditors.

This Indenture, Made and entered into this _____ day of _____, 19____, by and between _____, of _____, and _____, of _____, co-partners doing business in _____ under the name and style of _____, hereinafter called the debtors, parties of the first part, and _____ of _____ hereinafter called the assignee, party of the second part, and the several persons, firms and corporations whose names are hereunto subscribed, hereinafter called the creditors, parties of the third part, witnesseth that:

Whereas, The debtors are indebted to said creditors in the sums set after their respective names in the schedules hereunder written, and

Whereas, The debtors have agreed to make the assignment and enter into the covenants hereinafter contained, and the said creditors have agreed with said debtors, and mutually each with the others, to accept these presents in satisfaction of their respective debts, and to execute the release hereinafter contained;

Now this indenture witnesseth, that in pursuance of said agreements, and in consideration of the premises, the said debtors hereby grant, assign and convey to the said assignee, his heirs, executors and administrators, all and singular the property, real and personal, and all effects and credits of the debtors, both partnership and individual, wherever situated, to which they or either of them are beneficially entitled, whether in possession, reversion or expectancy, except such portions thereof as are exempt from execution under the laws of said State of _____;

To Have and to Hold the same to the said assignee, his heirs, executors, administrators and assigns, to his and their use and behoof forever, subject to any valid outstanding mortgages or other liens, but in trust nevertheless and for the following uses and purposes, namely:

1. To take possession of, and to sell and dispose of, all of said property and effects, at such times, in such manner and on such terms as to said assignee may seem most for the interest of said creditors, and for the best

price he is able to obtain, and convert the same into money, and to collect all debts, bonds, notes and other claims and choses in action, and for that purpose, if necessary to bring suit in the names of the debtors or either of them, with full power to compromise claims, discount bills and complete or refuse to complete contracts heretofore entered into by the debtors, as he in his discretion may deem best.

2. And in the meantime and until said premises and property respectively shall have been sold and converted into money as aforesaid, to manage, employ, repair and insure against damage by fire or otherwise, at the cost of the trust estate all or any part of said premises and property.

3. And furthermore, and for such length of time as the said assignee may deem it for the best interests of said creditors, to carry on the business heretofore carried on by the debtors, and for that purposes to make such advances from the trust estate as he may think fit.

4. To pay from the proceeds of said trust estate all necessary or proper costs, charges and expenses incurred in the execution of these trusts, including the expenses of preparing this instrument and reasonable and proper charges for the services of the assignee hereunder; all taxes due to the United States, the State or any county, town or city; all sums necessary to discharge any valid liens for labor or materials or otherwise; all wages due to workmen, clerks, salesmen or servants for services rendered within three months before the date of this indenture, not exceeding three hundred dollars to each; and any other claims which have priority under the Bankruptcy Laws of the United States.

5. To apply the balance of the funds in his possession to the payment, equitably and ratably of the debts and liabilities of the debtors to the creditors which were at the date of this indenture provable in bankruptcy against the debtors or either of them, and for the amounts so provable; creditors of said copartnership to be first paid out of the partnership property, and of said individual partners out of the private property of said individuals respectively, and creditors holding security to receive dividends only on the amount of their claims in excess of the value of such security; such payments to be made in instalments at such times as the assignee shall think fit, and to pay any balance remaining after the full payment of said debts to the debtors.

6. It is understood and agreed that dividends are to be paid only on the claims of creditors of said firm and of said individual partners who shall within thirty days after the date of this indenture become parties hereto by signing and sealing the same, and who shall within that time furnish the assignee with a statement of their respective claims; but the assignee may in his discretion, and for good cause shown, permit other creditors to become parties hereto after the expiration of said thirty days.

7. The assignee shall have full power to examine and adjust the claim of any creditor, and to fix the amount for which such claim is to be entitled to dividends. In case of any disagreement between the assignee and such creditor as to the validity of his claim or the amount thereof the matter shall be submitted to arbitration, and the decision of the arbitrator, or of the majority, if there be more than one, shall be final.

8. The debtors agree to aid the assignee in the performance of his duties by furnishing any required information in regard to their property and business and the claims of their creditors; and they hereby make, constitute and appoint the said assignee, or his successors for the time being under the trusts hereby created, as their attorney and the attorney of each of them, in their names and stead to execute, seal with their seals, acknowledge and deliver any and all written instruments which may be necessary or proper to carry into effect the terms of this indenture, and they further agree to execute, seal, acknowledge and deliver, at the request of the assignee, any instrument or instruments which he may deem necessary for the purposes aforesaid.

9. This indenture further witnesseth, that in pursuance of said agreements and in consideration of the premises, the said creditors respectively—including all who shall become parties hereto—hereby release the said debtors from said debts, and from all other debts owing to them by said debtors respectively, in respect whereof they are entitled to receive dividends under this indenture, and from all actions, claims and demands whatever—other than their respective rights under these presents—in respect thereof.

10. Provided however, and it is hereby agreed that these presents shall not in any way prejudice or affect the rights or remedies of said creditors against any surety or sureties or any person or persons other than the said debtors, nor any security which any of said creditors may have for his debt.

11. A majority in number, representing two-thirds in value, of creditors, parties to this indenture, present or represented at a meeting of creditors called for the purpose by a notice signed by creditors representing one-fifth of the aggregate claims against the estate, may remove the assignee for any cause which may seem to them sufficient, and may choose a new assignee in his stead and appoint a committee to execute to such new assignee a deed of appointment, the expense of such proceeding to be paid from the estate.

In case of the death or resignation of the assignee a successor may be chosen by vote of a majority in number and value of creditors present or represented at a meeting of creditors called in the manner above provided.

Any successor to said assignee elected as hereinbefore provided shall succeed to the title of said assignee to all the trust estate in his hands and be vested with all the powers and become subject to all the trusts in this indenture set forth.

In Witness Whereof, The said (*debtors*) and the said (*assignee*) have hereunto set their hands and seals the day and year first above written, and the several persons whose names appear in the schedules hereto have hereunto set their hands and seals, and the several corporations executing these presents have caused their corporate seals to be hereto affixed, and these presents to be subscribed in their names by their respective officers upon the days stated opposite their respective names and seals in said schedules.

(*Signature of partnership.*)

(*Signatures and seals of individual partners.*)

(*Signature and seal of assignee.*)

Schedule of Partnership Creditors.

<i>Signatures and Seals of Creditors.</i>	<i>Amount.</i>	<i>Dates of Execution.</i>

Schedule of Individual Creditors of _____ (Partner).

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Schedule of Individual Creditors of _____ (Partner).

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CHAPTER XXXIX.**OF THE DISPOSAL OF PROPERTY BY WILL.****SECTION I.****OF WILLS.**

Few persons are aware how very difficult it is to make an unobjectionable will. There is nothing one can do, in reference to which it is more certain that he needs legal advice, and that of a trustworthy kind. Eminent lawyers, not practised in this peculiar branch of the law, have often failed in making their own wills, both in England and in this country. And there are seldom blank forms for wills printed and sold, as there are for deeds and leases. Nevertheless, it may happen that one is called upon to make his own will, or a will for his neighbor, under circumstances which do not admit of delay; or he may have some interest in the will of a deceased person, and questions may have arisen, which some knowledge of legal principles will answer. We shall try to state here what may be of use in such cases; and shall append a form for a will.

Any person of sound mind and proper age may make a will. A married woman formerly could not do so, unless in relation to trust property, whereof the trust or marriage settlement reserved

to her this power; but now by statute in all the States she is empowered to dispose of her property by will, subject in some States to limitations as to the interests of her husband.

One must be of full age in order to devise real estate. But in most of our States minors may bequeath personal property; and a frequent limitation of the age for such bequest is eighteen years for males, and sixteen years for females.

The testator should say distinctly, in the beginning of the instrument, *that it is his last will*. If he has made other wills, it is usual and well to say, "hereby revoking all former wills;" but the law gives effect to a last will always.

It should close with the words of attestation: "In witness whereof, I have hereunto signed and sealed this instrument, and published and declared the same as and for my last will, at _____ on this _____ day of _____." Then should follow the signature and seal; for this latter, although not always required by law, is usually and properly affixed.

The witnessing part is very material. The requirements in the different States are not precisely alike; but they are all intended to secure such attestation as will leave the fact of the execution of the will, and its publication as such, beyond doubt. In a very few States, it is enough if the signature be proved by credible witnesses, although there be no witnesses who subscribed their names to the will. In many, two subscribing witnesses are enough. It is so in the provinces of the Dominion of Canada, generally. But in some States it is necessary, *and in all I recommend*, that the testator should ask *three* disinterested persons to witness his will; and should then, in their presence, sign and seal it, and declare it to be his will; and they should then, each in the presence of the testator and of the other witnesses, sign their names as witnesses. See the Abstracts at the close of this chapter.

Each should see the execution which he says he witnesses; and the signing by the witnesses should all be seen by the testator; but the law is satisfied if the thing is done near the testator, and where he can see if he chooses to look. If the testator is too feeble to write his name, let him make his mark; and for this purpose any mark is enough, although a cross is commonly made. So, if a witness cannot write his name, he may make his mark; but this should be avoided if possible. It is not necessary for the witnesses to know anything about the contents of the will, but is

essential that they should know that the instrument they are called upon to attest is a will.

The witnesses' names should be subscribed to an attestation clause, and in this any alteration in the will should be noticed. If the attestation be in the following words, it will be safe in any part of this country :

"At _____ on this _____ day of _____ the abovenamed _____ signed and sealed this instrument, and published and declared the same as and for his last will; and we, in his presence, and at his request, and in the presence of each other, have hereunto subscribed our names as witnesses."

Witnesses should be selected with care, where that is possible; for if any question arises about the testator's sanity, or anything of the kind, their evidence is first to be taken, and is very important. It is desirable also that the witnesses should be persons well known and permanently located, so that they may readily be found when their testimony is required. For this, among other reasons, domestic servants and persons only casually present should not act as witnesses if others can be procured. In Massachusetts, and perhaps in some other States, a person who has been convicted of a felony is not a competent witness to a will; nor is the wife or husband of the testator or testatrix. But by a recent statute in Massachusetts it is provided that the incompetency of an attesting witness to a will, who is not disqualified by insufficiency of understanding, shall not render the will invalid. As a general rule, however, any person competent to do ordinary acts of business may be witnesses. Nor do the usual qualifications for business apply. Thus, married women and minors may be witnesses of wills. But no person should be called upon to witness a will who is a legatee, or an executor, or otherwise interested in the will, or the wife or husband of such person. If such a person were a witness, it might not avoid the will; but a legatee would lose or be obliged to renounce his legacy; and, generally, it might lead to unintended results. What was said in relation to deeds, of witnesses remembering, etc., or proof of handwriting in case of their death or absence, is true also of wills.

As to the body of the will, the testator must express his wishes as clearly and accurately as possible; and, unless he has good legal advice, he should make the disposition of his property as simple as possible.

The word "bequeath" applies, properly, to personal estate only; the word "devise" to real estate only. It is safe enough to begin, "I give, bequeath, and devise my estate and property, as follows: that is to say,"—and then go on and tell what shall be done with this and that piece of property, or sum of money.

Words of inheritance should be added to any devise of land (if not intended for the life of the devisee only), as was said in reference to deeds; although they are not required in wills so peremptorily as in deeds. The words of inheritance are,—To A B "and his heirs."

If it is intended, as usually is the case, that the will should apply to all the real estate possessed by the testator at the time of his death, although purchased after the will is made, there should be a clause expressing this intention.

If children are not provided for in a will, the law sometimes presumes they were forgotten; and it gives to any such child the same share as if there were no will, unless the omission is explained in the will, or by evidence, and shown to have been intentional. If the child were provided for in the lifetime of the father, the law, generally, would not presume that the child was forgotten; it is best, however, to guard against any question of the kind, by saying that the omission to give to the child anything is intentional.

If it be intended that inheritance taxes on any legacies or annuities shall be paid from the residuary estate, so that the full amount of such legacies or annuities shall be paid to the legatee or annuitant, it is important that this should be distinctly stated.

A testator should always name his executors; but the will is perfectly good without any executor being named, for the court of probate will appoint an "administrator with the will annexed."

If the testator desires that his executor or trustee should not give bonds, he should say so distinctly in his will. This is usually done by adding after the words of appointment: "and I request that he (*or they*) be exempt from furnishing sureties on his (*or their*) official bonds.

An olographic (or holographic) will is one written entirely by the testator's hand. Such wills are valid without attestation by witnesses, in some of the States.

A nuncupative will is one declared orally by the testator in the presence of witnesses and afterwards reduced to writing. Such wills are authorized by statute in many of the States, under various restrictions, but usually only for the use of soldiers in active service, or of sailors when at sea, and are limited to the disposition of personal property.

In the provinces of the Dominion of Canada, generally the laws as to the construction, effect, and execution of a will are the same as in the United States: the principal difference being that, in the Province of Quebec, the French rule prevails, and an olograph will is valid without witnesses.

SECTION II.

CODICIL.

A CODICIL is a little additional will. That is, it is a testamentary disposition, not revoking the former will, but varying it in some way, or making changes in it. There can be but one will, and that the last; but there may be any number of codicils, all valid. The changes made by a codicil in a will, or in former codicils, should be very distinctly stated; and some words like these should be used: "I hereby expressly confirm my former will, dated _____ excepting so far as the disposition of my property is changed by this codicil." And the codicil should be called, at the beginning and end, a codicil, and executed and witnessed in the same manner as a will.

If a codicil gives one a legacy, who has already one by the will, the codicil should state whether it gives the second legacy instead of the first, or in addition to it. And if advances are made to a child during life, there should be an indorsement on the will (but a statement in the will or codicil would be better), stating whether these advances are to be charged to him, and in what way, whether with interest, etc.

SECTION III.

REVOCATION OF WILLS.

THE law concerning the revocation of a will is quite nice and technical. A codicil, we have seen, does not revoke, and a new will does. So might tearing off the name; but then the question might come, who tore it off? It is better to leave neither this nor

any other question, and therefore to destroy a will which it is intended to revoke. If the will is out of the testator's reach and power, and so cannot be destroyed, it would be best to make a new will, revoking the old one; which any testator can always do.

A will is revoked by the operation of law, if the testator afterwards marry and have a child; and, as a general rule, marriage alone operates as a revocation, unless the will itself shows that it was made in contemplation thereof. If the testator, after this, intends that his will shall take effect, he should expressly confirm it; and the best way to do this would be by making a new will. If he leaves anything to his wife, and intends that she should have it instead of dower, or of the additional rights which recent statutes in some of the States have given her, he should say so. And then she will not have both, but may choose between the provision of the law and that of the will, taking whichever she prefers, and leaving the other.

For the rights of the wife or widow in the several States, I refer back to the abstract of the statutes of the several States, in Chapter IV.

Annexed to this chapter is an abstract of the laws of all the States relating to wills.

It is impossible to do more than to give such forms and rules as will be applicable to all wills, and enable any person to draw a simple will with safety. No one can express accurately provisions for trust estates, remainders, executory devises, etc., without knowing the law on these subjects—and this is an extensive and difficult department of the law. All that is necessary, and may be relied upon as generally sufficient, is as follows:

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Form of a Will.

I, _____ of (*place and occupation*), make this my last will and testament. I give, devise, and bequeath all my estate and property, real and personal, as follows, that is to say:

Then follow all the provisions and disposition of property which the testator intends, stated fully, plainly, and as accurately as possible, paying due regard to the rules and principles laid down in the chapter of this book on this subject. If these provisions are carefully presented in distinct and intelligible language, the courts will generally supply whatever of technicality

is wanting. Then follows, first, the appointment of an executor, and then the execution, and finally the declaration of the witnesses, thus:

I appoint (*name, residence, and occupation*) executor (*or executors if more than one be desired*) of this my will.

In Witness Whereof, I have signed and sealed and published and declared this instrument as my will, at (*place*), on (*date*).

(*Signature.*) (*Seal.*)

The said _____ at said (*place*), on said (*day*), signed and sealed this instrument, and published and declared the same as and for his last will in our presence. And we, at his request, and in his presence, and in the presence of each other, have hereunto written our names as subscribing witnesses.

(*Here follow the names of three witnesses.*)

A codicil should be written thus:

I, _____ of (*place and occupation*), do make this codicil to my last will and testament dated _____, hereby ratifying and confirming my said will, and the codicils thereto (*if there be any*), dated _____, so far as this codicil is consistent therewith; and do hereby—

Then follows whatever disposition the testator chooses to make, stating and describing it as he would if it were a will, and executing it, and having it attested in the same manner as if it were a will, excepting that, instead of calling it a will, wherever that word occurs, he says, "codicil" instead of "will." If he gives in his will or codicil a legacy to a woman, it is generally best to add "this legacy (or bequest) to be for her sole and separate use, independent of her husband, at all times."

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Copy of a Fuller Form of a Will.

Be It Remembered, That I, _____ in the city of _____ in the State of _____, Esquire, do make this my last will and testament, in manner following. That is to say,—

I order and direct that all my just debts shall be paid with convenient speed.

I give unto Mr. _____ of said city, merchant, the amount of moneys due and owing from him to me, according to the tenor and effect of two promissory notes signed by him, viz: one dated October 16, 1819, for ninety-six hundred and eighty dollars; one dated August 9, 1822, for five thousand dollars; and I order said notes to be cancelled.

To _____ the wife of said _____ I give an annuity of six hundred dollars, to be paid her in two equal and half-yearly payments of three hundred dollars each.

It is my will, and I order and direct that a trust fund of ten thousand dollars shall be raised out of my estate and invested at interest, the income and produce of which trust I give unto _____ of _____, single woman, to be paid to her half-yearly, during her natural life. And at the decease of the said _____ the principal sum or trust fund shall be paid to and among such person and persons in such shares and portions as she, the said _____ by any writing by her signed in the presence of two or more credible witnesses, shall give, direct, and appoint. And in default of such appointment, then said trust fund, or principal sum shall go, as the residue of my estate, to the residuary legatees hereinafter named.

I also direct that another trust fund of ten thousand dollars shall be raised out of my estate and invested at interest. And I give the interest and produce of this trust fund, when and as it accrues, unto _____ the wife of _____. It is my will that the income of this fund, or principal sum shall, during the natural life of said _____ either be paid into her proper hand, or upon her order or receipt, signed by her alone, notwithstanding her coverture. And I declare that neither the principal nor income of this fund shall be subject to the control, debts or engagements of the present or any future husband of said _____ the same being intended for her sole and separate use.

At the decease of said _____ I give said principal sum or trust fund to the issue of said _____ and in default thereof to such other person or persons as she, by a last will, or any writing in the nature of a last will, shall give, direct, or appoint the same; and in default of such appointment, it is my will that said trust fund or principal sum shall be disposed of and pass as part of the residue of my estate.

To _____ wife of _____ of _____ I give three hundred dollars, and direct three notes, held by me, signed by her husband, for one hundred dollars each, to be cancelled.

To _____ wife of _____ of _____ there shall be paid in money, or delivered in articles necessary for her support, at the discretion of the executor of this my will, one hundred and fifty dollars annually, during her life, at such time and in such portions as he shall choose.

I give to _____ son of _____ one thousand dollars, and order that he shall be charged with such amount of moneys as he shall be my debtor for, upon promissory notes at my decease.

I devise the wood-lot in _____ which I bought of one _____ to _____ wife of _____ above named, to hold to her for life, the remainder I give to the child or children of said _____ who shall survive her, and his, her, or their heirs for ever.

If _____ shall be a member of my family at the time of my decease, she shall and may continue to reside in my dwelling-house and participate in the use of the stores and furniture, in common with others of my family, for the term of six months thereafter.

To each of those of the following named persons who shall be in my service at the time of my decease, I give one hundred dollars, viz: _____

My will is that all annuities hereinbefore given shall take date from the day of the probate of this will; and all legacies, not annuities, shall be paid within eight months from the same period.

It is my will that all the capital or principal sums which shall be requisite to yield the several annuities above mentioned may, by my executor, be paid to _____ to be held and managed by said corporation as trustees under this will; or, if the said executor and the parties beneficially interested therein shall so elect, said capital or principal sums, or any of them, may be placed in the hands of such trustee or trustees as shall, upon application to the Supreme Court of _____ sitting in chancery, be appointed to receive the same, and perform this, my will, in that behalf.

I hereby authorize and empower my executor or any administrator with the will annexed who shall assume the execution of this will, to make sale of, and convey, in such manner, at such times and on such terms as such executor or administrator may deem best, any parcel or parcels of real estate, of which I may die seized, for the purpose of raising any and all such sums of moneys as shall be required for the trust funds, annuities, and legacies hereinbefore directed to be created, given, and bequeathed.

All the residue of my estate, real, personal, and mixed, wheresoever it may be found, and of whatsoever it may consist, I give and devise unto _____ to hold to him and his heirs forever.

I hereby revoke all wills by me heretofore made, and constitute the said _____ executor of this my last will.

In Witness Whereof, I, the above-named testator, have hereunto set my hand and seal, this twenty-sixth day of _____ in the year of our Lord nineteen hundred and _____

[L. S.]

Then and there signed, sealed, and published by _____ the testator, as and for his last will, in the presence of us, who, at his request, in his presence, and in presence of each other, have hereto set our names as witnesses.

ABSTRACTS OF THE LAWS OF ALL THE STATES AND TERRITORIES CONCERNING WILLS.

ALABAMA.

Every person of full age and sound mind may make a will. It must be in writing, signed by the testator, attested by at least two witnesses in the presence of the testator. Persons of the age of eighteen may dispose of personal property by will.

ALASKA.

Persons of full age and of sound mind may make a will disposing of real and personal property. It must be in writing, signed by the testator, or at his direction and in his presence, and attested by two competent witnesses subscribing their names in the testator's presence. Olographic wills, with or without attestation, are allowed.

ARIZONA.

Every person of full age or married may make a will. It must be in writing, signed by the testator and attested and subscribed in his presence by two or more witnesses above the age of fourteen years. If wholly written by the testator no witnesses are necessary.

ARKANSAS.

Every person over twenty-one years of age may devise real and personal property, and persons over eighteen may bequeath personal property. The testator must subscribe his name at the end of the will, in the presence of two witnesses, or shall acknowledge to them it was so subscribed, and shall declare it to be his will, and the witnesses must sign at the request of the testator. When the entire body and signature of the will are in the handwriting of the testator it may be proved by the evidence of three witnesses to the handwriting and signature without subscribing witnesses. Wills may be typewritten. Nuncupative wills of \$500 worth of personal property or less are valid, if made during the last illness of the testator.

CALIFORNIA.

Every person over the age of eighteen, of sound mind, may dispose of property, real or personal, by will. Wills, unless holographic, must be subscribed at the end by the testator, or some person in his presence, and by his direction, and must be attested by two witnesses to whom the testator declares it to be his will in the presence of, and at the request of, the testator, and in the presence of each other. Bequests for charitable purposes must be made at least thirty days before death of testator and cannot exceed one-third of estate if he leave legal heirs. Wills may be typewritten. Nuncupative wills are restricted by statute.

COLORADO.

Every person twenty-one years of age if a male, or eighteen years if a female, may dispose of property, real or personal, by will, and persons seventeen years of age may dispose of personal estate. All wills must be in writing, signed by the testator or some one in his presence, at his request, and attested in his presence by two or more credible witnesses. Neither husband nor wife can bequeath more than half of his or her property away from the other, but election by survivor must be filed within six months.

CONNECTICUT.

Every person eighteen years of age, or more, and of sound mind, may make a will, and every devise passes the whole title unless clearly limited; the will must be in writing, signed by the testator, and attested by three witnesses in his presence, and in the presence of each other. Typewritten wills are valid.

DELAWARE.

Any person of the age of twenty-one years, and of sound mind, may make a will. The will must be in writing, signed by the testator, attested and subscribed in his presence by two credible witnesses.

DISTRICT OF COLUMBIA.

Any person twenty-one years of age if a male, or eighteen if a female, and of sound mind, may make a will. All wills must be signed by the testator and attested and subscribed in his presence by two credible witnesses. Nuncupative wills only by soldiers and mariners; they require two witnesses and must be reduced to writing within ten days. All devises and bequests for religious purposes must be made at least one month before death.

FLORIDA.

Every person of the age of twenty-one years, and of sound mind, may make a will, and such will must be signed by the testator, or by some one in his or her presence and by his or her direction, and if disposing of real estate must be attested and subscribed in his or her presence, by two or more witnesses. Nuncupative wills must be proved by three witnesses present.

GEORGIA.

Persons of fourteen years of age and sound mind may make a will. A married woman may make a will of her separate estate. Wills must be in writing, signed by the testator, or by some person in his presence, and by his express direction, and attested and subscribed in his presence by at least three competent witnesses. Nuncupative wills must be proven by the oath of three competent witnesses.

HAWAII.

Every person of the age of eighteen years or over and of sound mind may dispose of his estate, real and personal by will. It must be in writing, signed by the testator, or by some person in his presence and by his express direction, and attested by two or more competent witnesses, subscribing their names in the presence of the testator. Legacies to witnesses are void unless there are two other competent witnesses.

IDAHO.

Any person of the age of eighteen may make a will. It must be signed by the testator in the presence of two witnesses, who must sign in the presence of each other, unless the will be nuncupative or olographic. Typewritten wills are valid. Devises and bequests for charitable purposes must be made at least thirty days before death.

ILLINOIS.

Any male of twenty-one years, or female of eighteen years, of sound mind and memory, may make a will. It must be in writing, signed by the testator, or by some one in his presence, and by his direction, and attested by two or more credible, disinterested witnesses in the presence of the testator. A devise to a witness is void unless the will is otherwise sufficiently attested.

INDIANA.

Any person, twenty-one years of age and of sound mind, may make a will and devise entire estate, saving provision for widow. The will must be in writing, signed by the testator, or in his presence, and by his direction, and

attested and subscribed in his presence by two or more competent witnesses. Typewritten wills are valid, as are nuncupative wills of personal property not exceeding one hundred dollars in value.

IOWA.

Testator must be of full age and sound mind. Personal property to the value of three hundred dollars may be bequeathed by a verbal (nuncupative) will, attested by two competent witnesses. All other wills must be in writing, witnessed by two competent witnesses, and signed by the testator, or by some one in his presence, and by his express direction. A devise to a charity shall not exceed one-fourth of the value of the estate if spouse, child or parent survive testator.

KANSAS.

Any person of full age, of sound mind, may make a will. It must be in writing, signed at the end by the testator, or by some one in his presence, and by his direction, and it must be attested in the presence of the testator by two or more competent witnesses, who saw the testator sign, or heard him acknowledge the will for his last will and testament. A husband or a wife cannot bequeath away more than one-half of his or her estate. Nuncupative wills are valid, where there are two competent witnesses thereto, if they were made during the last sickness of the testator.

KENTUCKY.

The testator must be of sound mind, and not under twenty-one years of age. Will must be in writing, signed by the testator, or some one for him, and, if not wholly written by himself, must be subscribed or acknowledged in the presence of at least two credible witnesses, who must sign in the presence of the testator. A legatee, who is a witness to the will must, if his testimony is necessary to prove it, surrender his advantage thereunder.

LOUISIANA.

Wills are of three kinds: 1. Nuncupative, or open testaments. 2. Mystic, or sealed testaments. 3. Holographic testaments. Nuncupative testaments, by public act, must be received by a notary public in the presence of three witnesses, residing where the will is executed, or five witnesses not residing in such place. It must be dictated by the testator, and written by the notary as dictated, then read to the testator in the presence of the witnesses, and signed by the testator, and attested by all the witnesses. Nuncupative testaments, by private act, must be written by the testator himself, or from his dictation, in the presence of five witnesses residing in the place where the will was made, or seven not residing in such place, or it is sufficient if the testator presents the paper, on which he has written the will, declaring that the paper contains his will. In country places three resident, or five non-resident witnesses, will be sufficient if a larger number cannot be obtained. It must be read by the testator to the witnesses and signed by testator and all the witnesses. Mystic, or sealed instruments, are made as follows: The testator must sign his dispositions, and the paper is then closed and sealed. He shall then present it thus closed to a notary public and,

three witnesses and declare it to be his last will and testament in their presence. The notary must then draw up the act of superscription on the same paper or envelope, and sign it together with the testator and the witnesses. Holographic wills are entirely written, dated, and signed by the testator himself. No child under sixteen years of age is permitted to be a witness. Any person over the age of sixteen may make a will. Wills are the subject of so many formalities in this state that it will be difficult for a layman to understand the technicalities.

MAINE.

The testator must be of sound mind, and twenty-one years of age. The will must be signed by the testator, or some one in his presence, and at his request, and subscribed in his presence by three credible witnesses, not interested in the will. No more than one hundred dollars worth of property can be disposed of by nuncupative will where there are less than three witnesses. A married woman or widow of any age may make a will.

MARYLAND.

Every person of twenty-one years of age if a male, or eighteen years if a female, may make a will. The will must be in writing, signed by the testator or some one in his presence, and by his express direction, and attested and subscribed in his presence by two or more credible witnesses. Typewritten wills are admitted to probate. Gifts for religious purposes, to take effect at death, must be approved by the legislature.

MASSACHUSETTS.

Every person of full age and sound mind may make a will, which must be in writing, signed by the testator, or by some one in his presence and by his direction, and attested and subscribed in his presence and in the presence of each other by three or more competent witnesses to whom the testator has declared it to be his will. A soldier in actual military service and a mariner at sea may make a nuncupative will of personal property. Beneficial devises or bequests to attesting witnesses are void unless there are three others.

MICHIGAN.

The testator must be of full age and sound mind. A devise passes the whole interest, unless specially limited. The will must be in writing, signed by the testator, or some one in his presence, and by his direction, and attested and subscribed in his presence by two or more competent witnesses who are disinterested. Typewritten wills are valid. Nuncupative wills up to three hundred dollars are valid where there are two witnesses. Devises and legacies to witnesses are void, unless there are enough other witnesses to prove the will, but in any case the witness may take an amount equal to what he would have received had the will not been proved.

MINNESOTA.

The requirements of a will are the same as in Michigan.

MISSISSIPPI.

The testator must be twenty-one years old, whether male or female, and of sound mind. The will must be signed by the testator, or some one in his presence, and by his direction, and, if not holographic, attested by two credible witnesses, who sign in the presence of the testator. Nuncupative wills, if exceeding one hundred dollars, may be made in the testator's last sickness, and witnessed by two competent persons. No devises of lands for charitable or religious purposes are allowed, but personalty may be given to charity, but not to a religious body.

MISSOURI.

Males of eighteen years of age may make will of personal property; and of twenty-one, of both real and personal estate. Females of eighteen may make will of both real and personal estate. The will must be in writing, signed by the testator, or some one by his direction, in his presence, and attested by two or more competent witnesses, who sign in the presence of the testator. Typewritten wills are valid. Wills of non-residents affecting real estate must be executed according to law of this State.

MONTANA.

Every person, over the age of eighteen, and of sound mind, may dispose of property, real or personal, by will. The will must be signed by the testator, or by some person in his presence, and by his express direction, and attested and subscribed in his presence by two or more competent witnesses to whom he has declared it to be his will. A holographic will need not be witnessed. Typewritten wills are valid. Nuncupative wills are allowed under certain conditions, if the estate is less than one thousand dollars.

NEBRASKA.

Any person of full age and sound mind may make a will. Wills must be in writing, signed by the testator, or some one in his presence, and by his direction, and attested and subscribed in the presence of the testator by two or more competent witnesses. Nuncupative wills are allowed, but only under statutory restrictions.

NEVADA.

The testator must be eighteen years of age and of sound mind. The will must be in writing, signed by the testator, or by some one in his presence, by his direction, and attested by two competent witnesses, subscribing their names in presence of the testator. Holographic will need not be witnessed. Nuncupative wills of estates of less than one thousand dollars are allowed under certain restrictions. Devises to witnesses are void unless the will can be otherwise proved than by their testimony.

NEW HAMPSHIRE.

Any person of twenty-one years of age and sound mind may make a will. It must be in writing, signed and sealed by the testator, or some one in his presence, and by his direction, and attested and subscribed by three or more credible witnesses. Nuncupative wills are allowed under certain conditions.

NEW JERSEY.

Testator must be twenty-one years of age and of sound mind. All wills, since the year 1850, must be in writing, signed by the testator, or the signature acknowledged by him, and he must declare the writing to be his last will in the presence of two witnesses, who are present at the same time, and who must subscribe the same in presence of the testator. A legacy or a devise to a witness is void, and such a witness is thereby rendered competent to prove the will.

NEW MEXICO.

Any person twenty-one years of age and of sound mind may make a will. Wills may be written or verbal. If written, they must be signed by the testator, or some person for him, and attested by two or more credible witnesses who must sign as witnesses at his request, in his presence, and in the presence of each other. Verbal wills must be attested by the same number of witnesses, who must testify that testator was of sound mind and judgment, and must all be present, see and hear testator speak, and each must understand clearly and distinctly every part of the will.

NEW YORK.

Males of eighteen and females of sixteen may make wills of personal property, but only persons of twenty-one years can devise real estate. Wills must be subscribed by the testator at the end, in the presence of each of the attesting witnesses, or acknowledged by him in their presence. There must be at least two witnesses who sign their names at the end, at the request of the testator; they should add also their residences, as failure to do so renders them liable to fine. There are certain statutory restrictions as to the amount of bequests to religious or charitable institutions.

NORTH CAROLINA.

The testator must be twenty-one years of age, and of sound mind. The will must be in writing, signed by the testator, or some one in his presence, and by his direction, and subscribed in his presence by at least two disinterested witnesses. Holographic wills, signed by the testator, and found among his valuable papers and effects, or lodged in the hands of some person for safe keeping, are allowed, and the handwriting must be proved by three witnesses. Wills may be typewritten. Nuncupative wills are allowed under certain restrictions.

NORTH DAKOTA.

Any person eighteen years of age and of sound mind may make a will. Wills, unless holographic, must be signed by the testator, or by some person in his presence, and by his direction, in presence of two or more witnesses to whom he declares it to be his will, and who must subscribe their names as witnesses at his request and in his presence. A holographic will need not be witnessed.

OHIO.

The testator must be of full age and sound mind, and the will must be in writing or typewritten, signed at the end by the testator, or some one in his

presence and by his direction, and attested by two or more competent witnesses, who saw the testator sign or heard him acknowledge the will. Typewritten wills are valid. Nuncupative wills and gifts to charities are allowed only under statutory restrictions.

OKLAHOMA.

Any person over eighteen years of age may make a will. It must be in writing, and, unless holographic, witnessed by at least two competent witnesses, who shall subscribe the same.

OREGON.

Every person twenty-one years of age may dispose of property, real and personal, by will, and every person of eighteen may bequeath goods and chattels. The will must be in writing, signed by the testator, or some one for him in his presence, and under his direction, who must subscribe his own name as a witness and state that he subscribed testator's name at his request, and be attested by two or more competent witnesses in his presence. Typewritten wills are customary.

PENNSYLVANIA.

Any person of full age and sound mind may make a will. It must be in writing, signed by the testator, or some one in his presence for him, and attested by two or more competent witnesses. Nuncupative wills and charitable gifts are restricted. Typewritten wills are proper.

THE PHILIPPINES.

Every person of the age of eighteen and of sound mind, including married women, may make a will, but cannot deprive husband or wife or heirs of the interest in his or her estate appertaining to them by law. It must be in writing, signed by the testator, or by some one in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of each other. The testator must also sign each page on the left margin, and the attestation must state the number of sheets or pages used, and the fact that the testator signed the will on every page thereof in the presence of the three witnesses. Any person eighteen years of age and of sound mind, not deaf, dumb or blind and able to read and write may be a witness. Legacies to witnesses or their near relatives are void, unless there are three other competent witnesses.

PORTO RICO.

Any person of the age of fourteen or over may make a will. Wills may be holographic, open, closed, or nuncupative.

A holographic will may be made only by a person of full age. It must be written and dated entirely by the testator and signed by him. It must be proved in court by three witnesses to the handwriting, but need not be signed by attesting witnesses.

An open will is executed before a notary and three witnesses, who must be of full age, residents of the locality, knowing the language of the testator, and not related to the notary, his clerks or servants, or to heirs or legatees.

A closed will must be signed on all the sheets by the testator, placed in a sealed envelope and authenticated by the testator as his will in the presence of a notary and five witnesses.

Wills made abroad by citizens of Porto Rico may be executed according to the laws of the place where made. Mutual wills are forbidden. There are restrictions on the amounts which a testator may leave away from his heirs.

RHODE ISLAND.

Persons eighteen years of age and of sound mind may bequeath personal property, and persons of twenty-one years may devise real estate. The will must be in writing, signed by the testator, or some one for him in his presence, and by his express direction, and attested and subscribed in his presence by two or more witnesses.

SOUTH CAROLINA.

Persons of twenty-one years of age may devise real estate, and persons under twenty-one, but of years of discretion, may bequeath personal property. Three or more credible witnesses are necessary, who must sign in presence of the testator and of each other. The will must be in writing, and signed by the testator. Nuncupative wills are allowed only under certain restrictions.

SOUTH DAKOTA.

Every person eighteen years of age may make a will. It must be in writing, subscribed by the testator, or by some person in his presence and by his direction, in the presence of two attesting witnesses to whom he declares it to be his will, and who must subscribe the same as witnesses at his request and in his presence. A holographic will need not be witnessed.

TENNESSEE.

Any person of sound mind, and twenty-one years of age, may dispose of real estate by will. Males at fourteen, and females at twelve, may bequeath personal property. Wills of real estate must be subscribed by the testator, or some one for him, and attested and subscribed in his presence, by at least two disinterested witnesses. Holographic wills found among the testator's valuable papers, or deposited for safe keeping, are allowed, if the handwriting is proved by three witnesses. No subscribing witnesses are necessary to wills of personalty, but two witnesses or equivalent testimony are necessary to establish them. Nuncupative wills are subject to statutory limitations.

TEXAS.

Every person twenty-one years of age, or married, and of sound mind, may make a will. It must be signed by testator, or for him in his presence, and by his direction, and if not holographic, attested by two or more credible witnesses over fourteen years of age. Will may be typewritten. Nuncupative wills must follow the statute as to the amount disposed of, the time when made, and the number of witnesses.

UTAH.

Any person of the age of eighteen years and of sound mind may dispose of property, real and personal, by will, except that a husband may not dispose of more than two-thirds of his real property without the consent of his wife. The will must be in writing, subscribed by the testator, in the presence of two or more witnesses, declaring it to be his will, and the witnesses must subscribe as witnesses, at his request, in his presence, and in the presence of each other. Wills may be typewritten. Holographic wills require no witnesses. Nuncupative wills must follow the statutory regulations. Gifts to witnesses are void unless the will can be otherwise proved.

VERMONT.

Every person of full age and sound mind may make a will. A will must be in writing, signed by the testator, or for him, in his presence, and by his direction, and attested and subscribed by three or more credible witnesses, in his presence, and in presence of each other. Wills may be typewritten. Nuncupative wills allowed under certain restrictions.

VIRGINIA.

Every person twenty-one years of age, and of sound mind, may make a will of real estate, and persons of eighteen years may bequeath personal property. The will must be signed by the testator, or some one for him, by his direction, and in his presence, and, unless holographic, attested in his presence, and in the presence of each other, by two or more competent witnesses. Nuncupative will may be made by soldiers in actual military service, or by mariners at sea.

WASHINGTON.

Every male above the age of twenty-one years, and every female above the age of eighteen, may dispose of property, real and personal, by will. The will must be in writing, signed by the testator, or by some person under his direction, and attested by two or more competent witnesses, subscribing their names in the presence of the testator. Nuncupative wills are valid only when the provisions of the restrictive statute are complied with.

WEST VIRGINIA.

The testator disposing of real estate must be twenty-one years of age, and of sound mind. The will must be in writing, signed by the testator, or by some one for him, in his presence, and by his direction, and unless holographic, the signature must be made and the will acknowledged in the presence of two competent witnesses, present at the same time, and who subscribe in the presence of the testator. Testators, eighteen years of age, may dispose of personal property by will. Holographic wills require no witnesses. Wills may be typewritten.

WISCONSIN.

Every person of full age, and any married woman of the age of eighteen years, may make a will. Wills must be in writing, signed by the testator, or some one in his presence, and by his direction, and attested and subscribed in his presence by two or more competent witnesses.

WYOMING.

Any person of full age and sound mind may make a will. The will must be in writing, signed by the testator, or by some other person, in his presence and by his direction, and attested by two competent witnesses. Olographic and nuncupative wills are allowed under certain restrictions.

CHAPTER XL.

EXECUTORS AND ADMINISTRATORS.

AN executor is a person named in the will of a deceased person, to settle his or her estate. There may be one or more; and they may be male or female. An administrator is one appointed by the court to settle the estate of a deceased person. If the deceased left a will, but did not appoint an executor, or the appointed executor refuses to act, or resigns, or dies, or for any reason fails to act, an administrator is appointed by the court "with the will annexed." The husband of a deceased wife, or the wife of a deceased husband, has generally the right to be appointed administrator; after them the next of kin in the order of relationship. But the courts have some discretion in the matter.

They act as the personal representatives of the deceased, having in their hands his means, for the purpose of discharging his liabilities, or executing his contracts, and of carrying into effect his will, if he have left one; and, in general, they are liable only so far as these means (called *assets*), in their hands, are applicable to such a purpose. But they may become personally liable; and a clause in the statute of frauds refers to this subject, making them not liable to pay any debt out of their own means, unless they give a promise to that effect, in writing, signed by them.

In this country, the judicial officer, or judge who has the charge of the settlement of estates, of the proof of wills, and of proceedings under them, is generally called the Judge of Probate. But in some States he is called Surrogate, Register or Registrar of Wills or of Probate, Judge of the Orphans' Court, etc. His powers and duties are very similar all over the country. From his decrees or decisions an appeal may generally be taken, by a

party who thinks himself aggrieved, to some higher court. The Judge of Probate is usually a county officer, and his jurisdiction is limited to his county.

If an executor or administrator receives, as such, a promissory note or bill of the deceased, and indorses the same with his name, without adding "executor," or "administrator," he is liable upon it personally. If he makes a note or bill, signing it "as executor," he is personally liable, unless he expressly limits his promise to pay, by the words, "out of the assets of my testator," or, "if the assets be sufficient," or in some equivalent way; but a note or bill so qualified would not be negotiable, because on condition. If an executor or administrator submits a disputed question to arbitration, in general terms, and without an express limitation of his liability, and the arbitrators award that he shall pay a certain sum, he is liable to pay it whether he has assets or not. But if the award be merely that a certain sum is due from the estate of the deceased, without saying that the executor or administrator is to pay it, he is not precluded from denying that he has assets.

Where a contract of the deceased is of an executory nature, and the personal representative can fairly and sufficiently execute all that the deceased could have done, he may do so, and enforce the contract. But where an executory contract is of a strictly personal nature—as, for example, with an author for a specified work, or with an artist for a painting, the death of the writer before his book is completed, or of the artist before the painting is finished, absolutely determines the contract, unless what remains to be done—as, for example, in the case of a book, the preparing of an index, or table of contents, etc., can certainly be done as well and to the same purpose and effect by another.

If executors or administrators pay away money of the deceased by mistake, or enter into contracts for carrying on his business for the benefit of his estate, and to wind up his affairs, they may sue on such contracts either in their individual or their representative capacities; but they should sue in the latter capacity, in order to avoid a set-off against them of their individual debts.

The title of an administrator does not exist until the grant of administration. Then it goes back to the death of the deceased; but only in order to protect the estate, and not for any other purpose. And if an agent sells goods of the deceased, after his death,

and in ignorance of his decease, the administrator may adopt the contract, and sue upon it.

On the death of one of several executors, either before or after probate, the entire right of representation survives to the others. But if an administrator dies, or a sole executor dies, no interest and no right of representation is transmitted to his personal representatives.

An executor derives his authority from the will, and his duties begin at the death of the testator. They may be stated thus:

1. He should cause the deceased to be buried in a suitable manner.

2. He should offer the will for probate as soon as he can with a reasonable regard to his convenience; and in proving the will, filing bonds, giving notice, making and returning an inventory, and the like, he must conform to the law of the State and the rules of the probate; and he will obtain at the office sufficient information on all these points.

3. He must collect the property, and after paying the debts, he must distribute or dispose of the remainder as the will directs.

4. He must render his account from time to time, until a final settlement of the estate is made, and will be directed at the Probate Office when and how to file his accounts.

An administrator derives his authority from the court. But his duties are then substantially similar to those of an executor; excepting, that he must distribute and dispose of the estate as the law requires, as he has no will to direct him, unless he is an administrator with the will annexed.

The debts must be paid in a certain order. This is not precisely the same in all the States; but it is very generally as follows:

1. Funeral expenses, charges of the last sickness, and probate charges.

2. Debts due to the United States.

3. Debts due to the State in which the deceased had his home.

4. Debts which are given priority by law.

5. To creditors generally.

If the estate is insufficient to pay all the debts due from it, as soon as the executor or administrator finds this to be the case, he should represent the case as insolvent at the Probate Court, and thereafter follow the requirements of the law of the State and

the rules of the Probate Office, in reference to insolvent estates of deceased persons.

In most of the States, all the necessary forms or instruments are given to applicants at the Probate Office.

CHAPTER XII.

GUARDIANS.

GUARDIANS of all descriptions are treated by courts as trustees; and in almost all cases they are required to give security for the faithful discharge of their duty, unless the guardian be appointed by will, and the testator has exercised the power given him by statute, of requiring that the guardian shall not be called upon to give bonds. But, even in this case, such testamentary provision is wholly personal; and if the individual dies, refuses the appointment, or resigns it, or is removed from it, and a substitute is appointed by court, this substitute must give bonds.

The guardian is held, in this country, to have only a naked authority, not coupled with an interest. His possession of the property of his ward is not such as gives him a personal interest, being only for the purpose of agency. But for the benefit of his ward he has a very general power over it. He manages and disposes of the personal property at his own discretion, although it is safer for him to obtain the power of the court for any important measure. He may lease the real estate, if appointed by will or court; he cannot, however, sell the real estate without leave of the proper court. Nor should he convert the personal estate into real, without such leave.

As trustee, a guardian is held to a strictly honest discharge of his duty, and cannot act in relation to the subject of his trust for his own personal benefit, in any contract whatever. And if a benefit arises thereby, as in the settlement of a debt due from the ward, this benefit belongs wholly to the ward. And it has been held that if a guardian makes use of his own money to erect buildings on the land of his ward, without having an order of the court therefor, he cannot charge the same in account with his

ward, or recover the amount from the ward. But we doubt whether a rule so severe would be applied unless for special reasons. He must neither make nor suffer any waste of the inheritance, and is held very strictly to a careful management of all personal property. He is responsible not only for any misuse of the ward's money or stock, but for letting it lie idle; and if he does so without sufficient cause, he must allow the ward interest or compound interest in his account.

To secure the proper execution of his trust, he is not only liable to an action by the ward, after the guardianship terminates, but, during its pendency, the ward may call him to account by his next friend, or by a guardian appointed by the court for the action. The courts have gone so far as to set aside transactions which took place soon after the ward came of age, and which were beneficial only to the former guardian, on the presumption that undue influence was used, and on the ground of public utility and policy.

A guardian cannot, by his own contract, bind the person or estate of his ward; but if he promise, on a sufficient consideration, to pay the debt of his ward, he is personally bound by his promise, although he expressly promises as guardian. And it is a sufficient consideration if such promise discharge the debt of the ward. And a guardian who thus discharges the debt of his ward may lawfully indemnify himself out of the ward's estate, or if he be discharged from his guardianship, he may have an action against the ward for money paid for his use. An action will not lie against a guardian on a contract made by the ward, but must be brought against the ward, and be defended by the guardian.

The guardianship is a trust so strictly personal, or attached to the individual, that it cannot be transferred from him, either by his own assignment or devise, or by inheritance or succession.

A married woman cannot become a guardian without the consent of her husband; but with that she may. A single woman who is a guardian generally loses her guardianship by marriage; but she may be re-appointed. In some States, she loses it by statute; in others, not.

CHAPTER XLII.**CONSTRUCTION AND INTERPRETATION OF CONTRACTS.**

SECTION I.**GENERAL PURPOSE AND PRINCIPLES OF CONSTRUCTION.**

THE importance of a just and rational construction of every contract and every instrument, is obvious. If any one contract is properly construed, justice is done to the parties directly interested therein. But the rectitude, consistency, and uniformity of all construction, enables all parties to do justice to themselves. For then all parties, before they enter into contracts, or make or accept instruments, may know the force and effect of the words they employ, of the precautions they use, and of the provisions which they make in their own behalf, or permit to be made by other parties.

It is obvious that this consistency and uniformity of construction can exist only so far as construction is governed by fixed principles, or, in other words, is matter of law. And hence arises the very first rule; which is, that what a contract means is a question of law. It is the court, therefore, that determines the construction of a contract. They do not state the rules and principles of law by which the jury are to be bound in construing the language which the parties have used, and then direct the jury to apply them at their discretion to the question of construction; nor do they refer to these rules unless they think proper to do so for the purpose of illustrating and explaining their own decision. But they give to the jury, as matter of law, what the legal construction of the contract is, and this the jury are bound absolutely to take.

A distinction is to be observed between the construction of a contract and the correction of a mistake. For, if it were in proof that the parties had intended to use one word, and that another was in fact used by a mere verbal error in copying or writing, such error might be corrected by a court of equity upon a bill filed for that purpose, and the instrument so corrected would be

looked upon as the contract which the parties had made, and be interpreted accordingly. But this jurisdiction is confined strictly to those cases where different *language* has been used from that which the parties intended. For if the words employed were those intended to be used, but their actual meaning was totally different from that which the parties supposed and intended them to bear, still this actual meaning would, generally, if not always, be held to be their legal meaning. Upon sufficient proof that the contract did not express the meaning of the parties, it might be set aside; but a contract which the parties intended to make, but did not make, cannot be set up in the place of one which they did make, but did not intend to make.

SECTION II.

SOME OF THE GENERAL RULES OF CONSTRUCTION.

THE subject-matter of the contract is to be fully considered. There are very many words and phrases which have one meaning in ordinary narration or composition, and quite another when they are used as technical words in relation to some special subject; and it is obvious that, if this be the subject-matter of the contract, it must be supposed that the words are used in this specific and technical sense.

So, too, the situation of the parties at the time, and of the property which is the subject-matter of the contract, and the intention and purpose of the parties in making the contract, will often be of great service in guiding the construction, because this intention will be carried into effect so far as the rules of language and the rules of law will permit. So the moral rule may be applicable, that a party will be held to that meaning which he knew the other party supposed the words to bear, if this can be done without making a new contract for the parties.

Indeed, the very idea and purpose of construction imply a previous uncertainty as to the meaning of the contract; for where this is clear and unambiguous, there is no room for construction, and nothing for construction to do. A court would not, by construction of a contract, defeat the express stipulations of the parties. And if a contract is false to the actual meaning and purpose of the parties, or of either party, the remedy does not lie in construction; but, if the plaintiff be the injured party,

in assuming the contract to be void, and establishing his rights by other and appropriate means; or, if the defendant be injured, by defending against the contract on the ground of fraud or mistake, if the facts support such a defense.

A construction which would make the contract legal is preferred to one which would have an opposite effect; and by an extension of the same principle, where certain things are to be done by the contract which the law has regulated in whole or in part, the contract will be held to mean that they should be done in such a way as would be either required or indicated by the law.

The question may be whether the words used should be taken in a comprehensive or a restricted sense; in a general or a particular sense; in the popular and common, or in some unusual and peculiar sense. In all these cases the court will endeavor to give to the contract a rational and just construction; but the presumption—of greater or less strength, according to the language used, or the circumstances of the case—is in favor of the comprehensive over the restricted, the general over the particular, the common over the unusual sense.

It is a rule that the whole contract should be considered in determining the meaning of any or of all its parts. The reason is obvious. The same parties make all the contract, and may be supposed to have had the same purpose and object in view in all of it, and if this purpose is more clear and certain in some parts than in others, those which are obscure may be illustrated by the light of those which are clear. Thus, the condition of a bond may help to explain the obligatory part. And the recital in a deed or agreement has sometimes great influence in the interpretation of other parts of the instrument. The contract may be contained in several instruments, which, if made at the same time, between the same parties, and in relation to the same subject, will be held to constitute but one contract, and the court will read them in such order of time and priority as will carry into effect the intention of the parties, as the same may be gathered from all the instruments taken together. And the recitals in each may be explained or corrected by a reference to any other, in the same way as if they were only several parts of one instrument.

Another rule requires that the contract should be supported rather than defeated. The court cannot, however, through a desire that there should be a valid contract between the parties, un-

dertake to reconcile conflicting and antagonistic expressions, of which the inconsistency is so great that the meaning of the parties is necessarily uncertain. Nor where the language distinctly imports illegality, should they construe it in a different and a legal sense, for this would be to make a contract for the parties which they have not made themselves. But where there is room for it, the court will give a rational and equitable interpretation, which, though neither necessary nor obvious, has the advantage of being just and legal, and supposes a lawful contract which the parties may fairly be regarded as having made. So, for the same reason, all the parts of the contract will be construed in such a way as to give force and validity to all of them, and to all of the language used, where that is possible.

All legal instruments should be grammatically written, and should be construed according to the rules of grammar. But this is not an absolute rule of law. On the contrary, it is so far immaterial in what part of an instrument any clause is written, that it will be read as of any place and with any context, and, if necessary, transposed, in order to give effect to the certain meaning and purpose of the parties. Still this will be done only when their certain and evident intent requires it. Inaccuracy or confusion in the arrangement of the parts and clauses of an instrument is, therefore, always dangerous; because the intent may in this way be made so uncertain as not to admit of a remedy by construction. Generally, all relative words are read as referring to the nearest antecedent. But this rule of grammar is not a rule of law, where the whole instrument shows plainly that a reference was intended to an earlier antecedent.

So, it is a general proposition, that where clauses are repugnant and incompatible, the earlier prevails in deeds and other instruments among the living, if the inconsistency be not so great as to avoid the instrument for uncertainty. But in the construction of wills it has been said that the latter course prevails, on the ground that it is presumed to be a subsequent thought or purpose of the testator, and therefore to express his last will.

An inaccurate description, and even a wrong name of a person, will not necessarily defeat an instrument. But it is said that an error like this cannot be corrected by construction, unless there is enough beside in the instrument to identify the person, and thus to supply the means of making the correction. That

is, taking the whole instrument together, there must be a reasonable certainty as to the person. It is also said that only those cases fall within the rule in which the description so far as it is false applies to no person, and so far as it is true applies only to one. But even if the name or description, where erroneous, apply to a wrong person, we think the law would permit correction of the error by construction, where the instrument, as a whole, showed certainly that it was an error, and also showed with equal certainty how the error might and should be corrected.

Instruments are often used which are in part printed and in part written; that is, they are printed with blanks, which are afterwards filled up; and the question may occur, to which a preference should be given. The general answer is, to the written part. What is printed is intended to apply to large classes of contracts, and not to any one exclusively; the blanks are left purposely, that the special statements or provisions should be inserted, which belong to this contract and not to others, and thus discriminate this from others. And it is reasonable to suppose that the attention of the parties was more closely given to those phrases which they themselves selected, and which express the especial particulars of their own contract, than to those more general expressions which belong to all contracts of this class. But if the whole contract can be construed together, so that the written words and those printed make an intelligible contract, this construction should be adopted. Because the intention of the parties is presumed to be "alive and active throughout the whole instrument, and that no averments are anywhere inserted without meaning and without use."

SECTION III.

OF THE PRESUMPTIONS OF LAW.

THERE are some general presumptions of law which may be considered as affecting the construction of contracts.

Thus, it is a presumption of law that parties to a simple contract intended to bind not only themselves, but their personal representatives; and such parties may sue on a contract, although not named therein. Hence, as we have seen, executors, though not named in a contract, are liable, so far as they have assets, for the breach of a contract which was broken in the life-

time of their testator. And if the contract was not broken in his lifetime, they must not break it, but will be held to its performance, unless this presumption is overcome by the nature of the contract; as where the thing to be done required the personal skill of the testator himself. So, too, if several persons stipulate for the performance of any act, without words of severalty, the presumption of law is here that they intended to bind themselves jointly. But this presumption also might be rebutted by the nature of the work to be done, if it were certain that separate things were to be done by separate parties, who could not join in the work.

It is also a legal presumption that every grant carries with it whatever is essential to the use and enjoyment of the grant. But this rule applies more strongly to grants of real estate than to transfers of personal property. Thus, if land be granted to another, a right of way to the land will go with the grant.

Where anything is to be done, as goods to be delivered, or the like, and no time is specified in the contract, it is then a presumption of law that the parties intended and agreed that the thing should be done in a reasonable time. But what is a reasonable time is a question of law for the court. They will consider all the facts and circumstances of the case in determining this, and if any facts bearing upon this point are in question it will be the province of the jury to settle those facts, although the influence of the facts when they are ascertained, upon the question of reasonableness of time, remains to be determined by the court.

SECTION IV.

OF THE EFFECT OF CUSTOM OR USAGE.

WE have already had occasion to remark, that a custom which may be regarded as appropriate to the contract and comprehended by it, has often very great influence in the construction of its language. The general reason of this is obvious enough. If parties enter into a contract, by virtue whereof something is to be done by one or both, and this thing is often done in their neighborhood, or by persons of like occupation with themselves, and is always done in a certain way, it must be supposed that they intended it should be done in that way. The reason for this supposition is nearly the same as that for supposing that the com-

mon language which they use is to be taken in its common meaning. And the rule that the meaning and intent of the parties govern, wherever this is possible, comes in and operates. Hence an established custom may add to a contract stipulations not contained in it; on the ground that the parties may be supposed to have had these stipulations in their minds as a part of their agreement, when they put upon paper or expressed in words the other part of it. So custom may control and vary the meaning of words; giving even to such words as those of number a sense entirely different from that which they commonly bear, and which indeed by the rules of language, and in ordinary cases, would be expressed by another word.

This influence of custom was first admitted in reference to mercantile contracts. And indeed almost the whole of the law-merchant, if it has not grown out of custom sanctioned by courts and thus made law, has been very greatly modified in that way. For illustration of this, we may refer to the law of bills and notes, insurance, and contracts of shipping generally. And although doubts have been expressed whether it was wise or safe to permit express contracts to be controlled, or, if not controlled, affected by custom in the degree in which it seems now to be established that they may be, this operation of custom is now fixed by law, and extended to a vast variety of contracts; and indeed to all to which its privileges properly apply. And qualified and guarded as it is, it seems to be no more than reasonable. In fact, it may be doubted whether a large portion of the common law of England and of this country rests upon any other basis than that of custom. The theory has been held, that the actual foundation of most ancient usages was statute law, which the lapse of time has hidden out of sight. This is not very probable as a fact. The common law is every day adopting as rules and principles the mere usages of the community, or of those classes of the community who are most conversant with the matters to which these rules relate; and it is certain that a large proportion of the existing law first acquired force in this way.

Other facts must be considered; as how far the meaning sought to be put on the words departs from their common meaning as given by the dictionary, or by general use, and whether other makers of this article used these words in various senses, or used other words to express the alleged meaning. Because the

main question is always this: Can it be said that both parties ought to have used these words in this sense, and that each party had good reason to believe that the other party so understood them?

Custom and usage are very often spoken of as if they were the same thing. But this is a mistake. Custom is the thing to be proved, and usage is the evidence of the custom. Whether a custom exists is a question of fact. But in the proof of this fact questions of law of two kinds may arise. One, whether the evidence is admissible, which is to be settled by the common principles of the law of evidence. The other, whether the facts stated are legally sufficient to prove a custom. If one man testified that he had done a certain thing once, and had heard that his neighbor had done it once, this evidence would not be given to the jury for them to draw from it the inference of custom if they saw fit, because it would be legally insufficient. But if many men testified to a uniform usage within their knowledge, and were uncontradicted, the court would say whether this usage was sufficient in quantity and quality to establish a custom, and if they deemed it to be so, would instruct the jury, that, if they believed the witnesses, the custom was proved. The cases on this subject are numerous. But no definite rule as to the proof of custom can be drawn from them, other than that derivable from the reason on which the legal operation of custom rests; namely, that the parties must be supposed to have contracted with reference to it.

As a general rule, the knowledge of a custom must be brought home to a party who is to be affected by it. But if it be shown that the custom is ancient, very general and well known, it will often be a presumption of law that the party had knowledge of it; although, if the custom appeared to be more recent, and less generally known, it might be necessary to establish by independent proof the knowledge of this custom by the party. One of the most common grounds for inferring knowledge in the parties, is the fact of their previous similar dealings with each other. The custom might be so perfectly ascertained and universal, that the party's actual ignorance could not be given in proof, nor assist him in resisting a custom. If one sold goods, and the buyer being sued for the price, defended on the ground of a custom of three months' credit, the jury might be instructed that the defense was not made out unless they could not infer from the evidence

the existence of the custom, but a knowledge of it by the plaintiff. But if the buyer had given a negotiable note at three months, no ignorance of the seller would enable him to demand payment without grace, even where the days of grace were not given by statute. In such a case, the reason of the law of custom—that the parties contracted with reference to it—seems to be lost sight of. But in fact the custom in such a case has the force of law; an ignorance of which cannot be supposed, and, if it be proved, it neither excuses any one, nor enlarges his rights.

No custom can be proved, or permitted to influence the construction of a contract, or vary the rights of parties, if the custom itself be illegal. For this would be to permit parties to break the law because others had broken it, and then to found the rights upon their own wrong-doing.

Neither would courts sanction a custom by permitting its operation upon the rights of parties, which was in itself wholly unreasonable. In relation to a law, properly enacted, this inquiry cannot be made in a country where the judicial and legislative powers are properly separated. But in reference to custom, which is a *quasi* law, and has often the effect of law, but has not its obligatory power over the court, the character of the custom will be considered; and if it be altogether foolish, or mischievous, the court will not regard it; and if a contract exist which only such a custom can give effect to, the contract itself will be declared void.

Lastly, it must be remembered that no custom, however universal, or old, or known, unless it has actually passed into law, has any force over parties against their will. Hence, in the interpretation of contracts, it is an established rule, that no custom can be admitted which the parties have seen fit expressly to exclude. Thus, to refer again to the custom of allowing grace on bills and notes on time, there is no doubt that the parties may agree to waive this; and even the statutes which have made this custom law, permit this waiver. And not only is a custom inadmissible which the parties have expressly excluded, but it is equally so if the parties have excluded it by a necessary implication; as by providing that the thing which the custom affects shall be done in a different way. For a custom can no more be set up against the clear intention of the parties than against their

express agreement; and no usage can be incorporated into a contract which is inconsistent with the terms of the contract.

Where the terms of a contract are plain, usage, even under that very contract, cannot be permitted to affect materially the construction to be placed upon it; but when it is ambiguous, a long-continued usage may influence the judgment of the court, by showing how the contract was understood by the parties to it.

SECTION V.

OF THE ADMISSIBILITY OF EXTRINSIC EVIDENCE IN THE INTERPRETATION OF WRITTEN CONTRACTS.

It is very common for parties to offer evidence external to the contract in aid of the interpretation of its language. The general rule is, that such evidence cannot be admitted to contradict or vary the terms of a valid written contract; or, as the rule is expressed by writers on the Scotch law, "writing cannot be cut down or taken away by the testimony of witnesses." The rule is often expressed with sufficient exactness for ordinary purposes, in this way: "Evidence may be admitted to explain a written contract, but not to contradict it." There are many reasons for this rule. One is, the general preference of the law for written evidence over unwritten; or, in other words, for the more definite and certain evidence over that which is less so; a preference which not only makes written evidence better than unwritten, but classifies that which is written. For if a negotiation be conducted in writing, and even if there be a distinct proposition in a letter, and a distinct assent, making a contract, and then the parties reduce this contract to writing, and both execute the instrument, this instrument controls the letters, and they are not permitted to vary the force and effect of the instrument, although they may sometimes be of use in explaining its terms. Another is, the same desire to prevent fraud which gave rise to the Statute of Frauds; for as that statute requires that certain contracts shall be in writing, so this rule refuses to permit contracts which are in writing to be controlled by merely oral evidence. But the principal cause alleged in the books and cases is, that when parties, after whatever conversation or preparation, at last reduce their agreement to writing, this may be looked upon as the final consummation of their negotiation, and the exact expression of

their purpose. And all of their earlier agreements, though apparently made while it all lay in conversation, which is not now incorporated into their written contract, may be considered as intentionally rejected. The parties write the contract when they are ready to do so, for the very purpose of including all that they have finally agreed upon, and excluding everything else, and making this certain and permanent. And if every written contract were held subject to enlargement, or other alteration, according to the testimony which might be offered on one side or the other as to previous intention, or collateral facts, it would obviously be of no use to reduce a contract to writing, or to attempt to give it certainty and fixedness in any way.

It is nevertheless certain, that some evidence from without must be admissible in the explanation or interpretation of every contract. If the agreement be, that one party shall convey to the other, for a certain price, a certain parcel of land, it is only by extrinsic evidence that the persons can be identified who claim or are alleged to be parties, and that the parcel of land can be ascertained. It may be described by bounds, but the question then comes, where are the streets, or roads, or neighbors, or monuments referred to in the description; and it may sometimes happen that much evidence is necessary to identify these persons or things. Hence, we may say, as the general rule, that as to the *parties* or the *subject-matter* of a contract, extrinsic evidence may and must be received and used to make them certain, if necessary for that purpose. But as to the terms, conditions, and limitations of the agreement, the written contract must speak exclusively for itself. Hence, too, a false description of person or thing has no effect in defeating a contract, if the error can be distinctly shown and perfectly corrected, by other matter in the instrument.

A written contract, of which the memorandum satisfies the statute of frauds, is open to evidence to show that certain essentials of the actual contract are not in the memorandum, if the effect of the evidence is, not to vary the written contract, but to show that no such contract was ever made.

Recitals in an instrument may sometimes be qualified or contradicted by extrinsic evidence. By "recitals" are meant the narrative of the circumstances or purposes which have induced the parties to make the contract. So the date of an instrument,

or if there be no date, the time when it was to take effect, which may be other than the day of delivery; or the amount of the consideration paid, may be varied by testimony; but if a note given for land is sued, the promisor cannot show in defence that the deed described a less quantity of land than had been stipulated. And an instrument may be shown to be void and without legal existence or efficacy, as for want of consideration, or for fraud, or duress, or any incapacity of the parties, or any illegality in the agreement. In the same way, extrinsic evidence may show a total discharge of the obligations of the contract; or a new agreement substituted for the former, which it sets aside; or that the time when, or the place where, certain things were to be done, had been changed by the parties; or that a new contract, which was additional and supplementary to the original contract, had been made, or that damages had been waived, or that a new consideration, in addition to the one mentioned, has been given, if it be not adverse to that named in the deed. And if no consideration be named, one may be proved.

We have already said that a receipt for money is peculiarly open to evidence. It is only *prima facie* evidence either that the sum stated has been paid, or that any sum whatever was paid. It is in fact not regarded as a contract, and hardly as an instrument at all, and has but little more force than the oral admission of the party receiving. But this is true only of a simple receipt. It often happens that a paper which contains a receipt, or recites the receiving of money or of goods, contains also terms, conditions, and agreements, or assignments. Such an instrument, as to everything but the receipt, is no more to be affected by extrinsic evidence than if it did not contain the receipt; but as to the receipt itself, it may be varied or contradicted by extrinsic testimony, in the same manner as if it contained nothing else.

Lastly, no contract will be enforced, as a contract, if it have no plain and natural or legal meaning, by itself; and if admissible, extrinsic evidence can only show that the intention of the parties was one which their words do not express. But the supposed contract being set aside for such reasons as these, the parties will be remitted to their original rights and obligations.

CHAPTER XLIII.**LEGAL RIGHTS AND OBLIGATIONS OF FARMERS.**

SECTION I.**HIS TITLE TO HIS FARM.**

THIS right may arise from and rest upon possession, inheritance, purchase, or hiring.

1. POSSESSION.—If the farmer or they from whom he inherits have possessed the land without disturbance or adverse claim for a sufficient number of years, it is his by what is called prescription. The meaning of this is, that the law does not allow any adverse claimant to set up an old and stale claim to the farm, and on the strength of it deprive a man of property which he has held in peace for a long period. This law was founded upon the probability that they who have held quiet possession of land for a long time must have held it by right; and that no one would be likely to lie by and make no claim to the land if he had a good title to it. Ages ago, the period required to give title by mere lapse of time was a very long one. Gradually it became shorter, and is now in this country quite short. Exceptions to the rule are always made in favor of those who by reason of absence, infancy, or imbecility have been unable to assert their claims—the principle being that no one should lose his land by suffering another to possess it quietly for a long time but he who could have made claim, and was therefore properly punished for his neglect.

In Chapter XXIII, on limitations, and in the abstract of the statutes of limitations, beginning on page 275, the reader will find stated the periods of time within which, in the several States, an action must be brought to recover real estate—that is, land. If brought afterwards, the lapse of time is a sufficient defense, unless the plaintiff who seeks to recover the land can justify his delay in bringing his suit by showing that he or she was an infant, or absent from the State, or imbecile, or a married woman, or under some other disability; and that he or she brought his or her action within the prescribed period, if that began after his disability was removed.

2. **INHERITANCE.**—In this country there is not only an entire absence of the right of primogeniture, but no other difference between the inheritance of real estate or land, and of personal property in goods and chattels, than that which arises necessarily from the difference in the nature of these two kinds of property. We retain, generally, the phraseology of the English law. The word “inheritance” applies in law only to real property, and the statutes by which it is determined how such property passes to the issue or relatives of the deceased, are commonly called statutes of inheritance. Whereas those which determine how and where the personal property shall go are called statutes of distribution. But in all the States these two statutes are nearly alike; that is to say, the persons entitled to the real estate of a deceased man are almost always those to whom the personal property would go as to the next of kin to the deceased.

A person who takes a farm by inheritance (using the word in its common meaning), must take it either under the will of the deceased, or by force of law as the heir of the deceased. On this subject we refer to what we have said in our chapters on wills and on executors and administrators.

3. **PURCHASE.**—In this country land can only be transferred by **DEEDS**.

If a man makes a bargain to buy a farm and is so unwise as to take possession without having a sufficient deed duly executed, his bargain gives him no title to his farm, which still remains the property of the man who agreed to sell it. But if the bargain be in writing and sufficiently distinct, the law may help him and compel the owner to carry his bargain into effect by giving a sufficient deed.

The wiser way, if for any reason the parties are not ready to give and receive a deed, is for the intended buyer to take from the intended seller a bond for a deed, of which he will find several forms. See forms 28, 30, and 31, in this book.

For offers made on time, see the third section of the fifth chapter.

For the law of deeds we refer to our chapter on deeds. In that chapter will also be found what it is most important to know, remember, and practice—that is the legal requirements concerning the signing, sealing, acknowledgment, delivery, and recording of

deeds. Ignorance or neglect of any of these matters may destroy a man's title to his farm and deprive him of it.

It is now so common to sell a farm at auction that it is well to give some of the rules of law about sales at auction.

4. SALES OF LAND AT AUCTION.—Every bid by any one present is an offer by him. It may be withdrawn before the hammer falls; but if not withdrawn, then the offer is accepted and the bargain made.

If a farm be sold, the plan or description offered at the sale must give true information, or the purchaser is not bound to take the estate. If the descriptions are written or printed and circulated among the bidders, they cannot be contradicted by verbal declarations made by the auctioneer at the time of the sale.

If land is sold in several lots, and each is bought by itself, there is a separate bargain for each lot; and therefore if the seller can make good title to only one or more of the lots, the buyer must take them though he cannot have the other lots he bought; unless he can show that the buying of the whole was a valid part of the inducement or motive for buying any, and that the part he could have would not answer his purpose unless he could have the other lots.

Whether by-bidders for the seller authorize a purchaser to abandon a sale has been much disputed. Of course any fraudulent act of the seller would have that effect; but it seems to be law that by-bidding is not necessarily fraudulent, if the seller wishes only to avoid sacrifice. But the honest way would be to put the land up at a price. And if the seller or auctioneer declares at the sale that there is no by-bidding, or makes any declaration to that effect, and then employs by-bidding, the buyer is not bound to take the land.

An agreement among many persons that one should bid for all is not necessarily illegal.

An auctioneer of real or personal property who does not give the name of the owner is himself liable to the buyer for the completion of the sale, and for any warranty he makes; and so he is if he sold and warranted without authority. But if he has authority from the owner and states who the owner is, he puts the liability for the sale and the warranty upon the owner.

SECTION II.

WHAT ONE TAKES BY THE DEED OF A FARM.

1. BOUNDARIES AND DESCRIPTIONS.—The first question is what land does he take; and this question is answered by the boundaries. These cannot be stated too carefully, and cases where difficulties and law-suits have arisen from their inaccuracy or insufficiency are very frequent.

One rule to be remembered is, that evidence of what the parties meant and intended cannot be used to contradict what they have said in writing. See page 44. This rule sometimes works great injustice; but the reason of it is obvious, for if, after parties had agreed upon a matter, and put it in writing in the most formal manner, either of them could put the writing aside by evidence that he meant something else, nobody would be safe in his contracts or secure in his rights.

But evidence is receivable to show that either of the parties used language to defraud the other; for fraud can always be exposed, and whenever shown gives the defrauded party the right to avoid the contract. Words and conversation about the farm amount to nothing in law.

The intending seller may say how much stock it will feed, or what crops it will produce, and if he deceives the buyer this man has no remedy, for he must judge of these matters for himself, or get disinterested advice. But if he should state falsely and fraudulently that the farm had in fact fed so much stock or produced such crops, the deceived buyer would have his remedy, and could avoid the sale if he thought fit.

Evidence is always admissible to show what the contract or instrument means, as who the parties are, or where the farm or land is. The rule is, that evidence cannot *contradict* but may *explain* a written contract. If a deed says John Smith sells the land, evidence cannot show that it was Peter Robinson; but if there be John Smith the father and John Smith the son, it can show which of them is meant.

So the boundaries may be obscure or uncertain; and while evidence cannot put new boundaries into a deed, it may make those which are there certain. So boundaries may be inconsistent. The farm may be said to contain so many acres, and to

measure five hundred rods from such a boundary to such a boundary in a northwest direction. But there may be no boundary in that direction, and the distance from one bound to the other may be four hundred and six hundred rods, in a north-northwest direction, and the farm may contain more or fewer acres than the description. In such a case evidence may show, if it can with reasonable certainty, just what the bounds actually are, as certain trees, or posts, or rocks. And if the boundaries are made certain they will control distances, directions, and contents, unless the discrepancies are so great as to show either fraud on one part or the other, or that the parties labored under some mistake, and could not have *agreed in their minds* one to sell and the other to buy the same farm; for this agreement of minds is in law the very essence of a contract.

If the number of acres enters into the description, it is common to add, "be the same more or less." This guards effectually against any inaccuracy. But without it, the failure in the number of acres would not avoid the deed, unless it was so large as, with other circumstances, to show fraud. If there be ever so much fraud, the fraudulent party cannot take advantage of it, and only the defrauded party can. If the seller says the farm contains so many acres when he knows it does not, and then points out the boundaries accurately and truly, the buyer is without redress, because he has the means of correcting the misrepresentation.

2. CONTENTS.—The rule of law is, and for many centuries has been, that whosoever owns land owns all there is above it and all there is below it; or as the old phrase ran, everything up to the sky and everything down to the center.

Of course all buildings and everything fairly belonging to the buildings go with the farm. But then comes the question, what does belong to them? The answer is given by the rules of law as to fixtures.

3. FIXTURES.—They are everything which is fixed or fastened to the land. And if anything be fastened to the land, whatever is fastened to that thing is fastened to the land. Thus: A house rests on a stone foundations sunk into the ground; but the doors and windows of the house are fastened to the house, and therefore they are fastened to the land; and the blinds belonging to the windows and the locks and keys to the door, though moveable

and for the time removed from them, and some other things of like kind not fastened to the house, are fixtures, and go with the house as that goes with the land. The cases are almost innumerable which have risen upon the question whether this or that thing is a fixture. Before attempting to show how this question has been answered, it may be well to state that many things are fixtures when a house is sold, so that the seller of the house cannot retain them, which would not be fixtures to the hirer of the house if he put them in; and when his lease expired he could, therefore, take them away with him.

In general, whatever the owner of the farm fastens to the ground or to a building, or uses constantly with it as an appurtenance to it, is a fixture, and he sells it when he sells the farm. But whatever a hirer buys or makes to use with the farm, and fastens to the ground or building, if he fastens it in such a way that he can remove it and leave the land or building in as good order and condition as before, he may remove and take away.

Of course the parties, whether buyer or seller, or hirer or lessor, may make what bargains they like about any fixture. The law of fixtures comes in only where they make no bargain.

A. Things held not to be removable by an outgoing tenant.—Barns and sheds fixed in the ground, statues erected on a permanent foundation as an ornament to the ground, chimney-piece not ornamental if it be fastened to the wall, closets affixed to the house, conservatory substantially affixed, fuel-house, hearths, hedges, pigeon-house, pump-house, wagon-house, box-borders not belonging to a gardener by trade, fruit trees not belong to a nurseryman. These last two illustrate a rule of much force and frequent application, namely: that a tenant of land which he hires to carry on a business there may add things as a part of his business and take them away, which he would be obliged to leave if they were not connected with his business.

B. Things held to be removable by an outgoing tenant.—Barns, stables, out-houses and sheds resting on logs or rollers, because this showed them to be affixed to the land only temporarily. Ornamental chimney-pieces, fire-frame, furnaces, cooking stove, gates, looking-glasses, trade fixtures generally.

There are two rules to be remembered, of almost universal force. One is that the outgoing tenant who has attached to the land or placed upon the premises anything which he cannot re-

move and leave the buildings or the land in as good condition as before, must leave that thing behind him.

The other is that an owner of land who attaches to his land or building almost any of the things which a tenant may remove, when he sells the land or building sells that thing, unless he expressly reserves a right to remove it.

4. **MANURE.**—If a man sells his farm he sells with the farm all the manure upon it, whether it be spread on the fields or is heaped up in the barn-yard or cellar.

If he lets his farm to another, the hirer takes the manure, unless the lessor reserves the right to take it away, and when the lease expires and the land returns to the owner, the manure goes with the land.

The owner of a farm may undoubtedly, before he sells it, remove the manure or sell it separately, if he does this openly and not secretly, and not in such a way as to deceive and cheat the buyer of the farm. What the right of the outgoing tenant is may not be so certain. But it may now be considered as the law of this country that a tenant who has occupied a farm on a lease, and whose lease is about to expire, cannot sell or remove the manure, but it goes with the farm to the owner.

5. **ROCKS, STONES, SOIL.**—These belong wholly to the owner of the land, and whoever buys it buys an absolute right to them. No man can take away a pebble or a spoonful of earth without a breach of the law. This is obvious, for if a man could take one spoonful he could take many, and that might be a cartload. And if he might take a pebble, he might take the rocks. These must belong to the owner of the land.

6. **ADJOINING ROADS.**—If one's farm is bounded by a road, and there are no restrictions or reservations in the deeds through which he derives title, he owns to the middle of the road, subject only to the right of the public to use it as a road, or, as it is called, their right of way; subject also to whatever rights the law of the State gives to surveyors of roads and highways, or other officers. Thus, he owns the grass on the road, and may take stone or gravel from the road as freely as from any part of the farm, provided he fills the vacant places with equally good road material and leaves the road in as good condition as before.

When the owner of a farm owns to the middle of the adjoining road he has all the rights to the land consistent with the public

right of way. He may plant trees on the sidewalk if permitted by proper authority, or unless they obstruct the use of the road, and they remain his property. Officers charged with the care of roads may remove them, but individuals are liable for their wanton destruction. If one fastens his horse to the trees, and the horse injures the trees, the man who tied him there is liable.

The owner of a farm cannot put any permanent structure on an adjoining road, nor keep his carts and sleds there nor pile his wood there, and if he does he is liable to anyone who suffers an injury from running against them while traveling over the highway.

7. TREES.—Of course the owner of a farm buys and owns all the trees upon it if at the time of the sale they were blown down and lie on the ground, but not if they have been cut for sale or fuel. There have been some cases in courts turning upon the question what are his rights if his trees hang over his neighbor's fields, and what are his neighbor's rights.

In the first place his neighbor owns *his* land absolutely, and all that is above and below it. Therefore he may cut away every bough and twig which comes over his land. And he may dig down close to the line of his land and cut away every root that comes into his land. But how is it as to the fruit which grows upon their branches? This fruit, like the branches themselves, belongs to the owner of the tree. His neighbor may cut the branches away, and they may fall on his ground, but he has no right to them. The original owner loses no property in them, but has a right to enter peaceably upon the land where they lie and take the fallen boughs away. So he retains his property in the fruit, and may enter upon the land where it lies, and gather it and take it away. Such, we think, are the conclusions to be derived from the best adjudication and the best reasoning on the subject.

SECTION III.

TRESPASSING ON THE FARM.

1. WHO IS A TRESPASSER.—The right of an owner of a farm to its entire possession is so absolute in law that nobody can set foot upon it, by day or night, against the owner's will, without committing what the law calls a trespass, or a breach of the law for which he is answerable. A man's house, says the old maxim, is

his castle, as effectually protected by the law as a castle by its walls and battlements. If a stranger goes at proper hours only upon the roads and paths of the farm, although they are not public, they are so far open that one who walks on them without evil design and without doing harm, and without express prohibition of some kind, would be held to have in some sort the owner's permission. But one who walks on the grass, or perhaps anywhere but on the roads or paths, is a trespasser, if without express permission.

2. OF THE RIGHT OF THE FARMER TO ORDER A TRESPASSER OFF FROM HIS LAND.—His right to do this is unquestionable. But suppose that he gives such an order and the trespasser will not go. What can the farmer do? Then the owner of the farm, or of any lot of land, however small, has an equally unquestionable right to put him off forcibly if the trespasser will not go peaceably. But how much force may the owner use? The answer to this question is distinct and certain so far as the law goes, but there may be some difficulty in the actual application of the rule. The rule of law is, that the owner of the land may, in order to expel the trespasser, "put his hands gently upon him." But then the question comes what is "gently." This question has been through English courts for centuries. They have come to a conclusion which the American courts generally adopt. This conclusion is that the owner may use whatever force is necessary to expel the trespasser, provided on the one hand that he does him no grievous bodily injury, and on the other that he uses no more force than the trespasser makes necessary.

For example: A goes into B's house, or barn, or on his land, and persists in remaining there, although B orders him away. B may lay hold of him, may summon help, and with as much help as he needs seize him, and if need be bind him hand and foot, carry him bodily off his premises, and then unbind him. Always on this condition, that he uses no more violence than is requisite to remove him, and that he avoids such measures as would do serious or permanent harm or endanger life or limb. But while B does only what is needed to remove A, and does this with sufficient care, if A by some accident is injured, B is not responsible, for it is A's own fault.

3. RESPONSIBILITY TO TRESPASSERS.—The mere fact that one is a trespasser does not, however, deprive him of all protection. If

he falls into a pit or excavation made by the owner of the land for a lawful purpose, the owner is not responsible. But the owner cannot wantonly or intentionally expose him to danger, as by setting a trap or a spring gun. Nor can he leave an animal which he knows to be vicious, as, for instance, a savage bull, at large in his pasture, and he would be responsible for any injury caused by such an animal to a person entering or crossing the pasture without knowledge that a dangerous animal was there.

SECTION IV.

FARM-WAYS.

Of course an owner of a farm may make or unmake his own roads or ways at his pleasure. His neighbor has nothing to do with them, unless the owner give him leave to use them, and a right of way must be conveyed by a deed, in like manner as the land itself. If, indeed, his neighbor claims a right to use one of them, and under that claim uses it as he would his own for more than twenty years without the permission of the owner, such neighbor might acquire a right of way by prescription. And if such rights of way become attached to a farm by prescription, whoever buys a farm buys with it those rights of way. But such a case would not often occur.

If a farmer sells a lot surrounded by the farm, he sells with it a right to pass to and from the lot. But the seller may mark out a sufficient passage to and from the land, and over that the buyer must go. And when a public highway is laid out which gives access to the lot, the buyer of it loses his right of passage over the seller's land, because this right is no longer necessary to his use and occupation of the lot.

SECTION V.

WATER RIGHTS.

THE owner of a farm owns the ponds upon his farm and the running streams, so far as to make a reasonable use of them for his land, stock, or house. He may change the course of a stream on his own land, but he must not divert it from his neighbor's land, nor can he lead it into his neighbor's land elsewhere than in its natural channel. He may dam it up so as to make ponds on his own land, but cannot overflow his neighbor's land except for

mill purposes under the local laws regulating such use of the water. If he does, his neighbor may enter his farm and remove the dam so far as to relieve his land from the overflow; and if the stream be obstructed by stones or rubbish on his neighbor's farm, he may go on his neighbor's land to remove the obstruction, and may put this on the banks of the stream. He may dig anywhere on his own land, even if he cuts off the springs which water his neighbor's land or supply his well or pond, for his neighbor has no property or legal interest in the waters which flow or stand below the surface of the land.

As the owner of a farm owns a stream or brook which runs through his farm, so if a farm bounds on a running stream that is not navigable he owns to what is called the *thread* of the stream, which is the middle of the main current, and may be on one side or the other of the middle of the stream.

SECTION VI.

FIRE.

THERE is a principle of law applicable in a reasonable way to everyone, and to the ownership and use of all property. It is this: "A man must use what is his own so as not to injure his neighbor." This rule applies distinctly to a man's right to kindle fire on his land. A man who owns any land, much or little, may kindle what fire he will upon it and burn what he will in the fire. But he is always responsible for the damage his fire does if he were negligent in any way about it. It may be that his neighbor's fences or buildings are so near him that he could not build a fire upon any part of his land without endangering his neighbor's property. Then it might be negligent in him to build a fire to burn brush anywhere, or he may build it of particularly inflammable and therefore dangerous material, or in a very dry time, or in a high wind, or too large a fire, or without watching it with the care that such a fire required to be reasonably safe. If he were sued for the damage it would be for a jury to determine, under the direction of the court as to the law, whether he was liable, and if so for how much. The court would instruct the jury that the builder of the fire was not liable if he built it on his own land, unless there were circumstances of some kind which satisfied them that he had been in some way negligent, and that

the damage was directly due to his negligence. Then would come the question, which is often very difficult because it must be answered by a well established rule, applicable not only to fire but in a great variety of cases, but which it is often very difficult to apply. This rule is that a wrong-doer is always answerable for all the *immediate* or *direct* effects of his wrong-doing, but not further. If we apply this rule to a case of fire, the man who built one or tended one negligently would be answerable to his neighbor not only for a shed that caught, but for his dwelling-house, though that stood at some distance, if it caught fire from the shed. But he would not be answerable to a more distant person whose house caught fire from the first house. The reason of the rule is obvious. If the builder of the fire were answerable for the second house, why not for the third which caught from the second, and why not for a whole city? It is plain that there must be some limit to a wrong-doer's liability for the consequences of his wrong-doing. It must stop somewhere. If the man whose house or store is burned down becomes thereby insolvent, no one would say that the man who set the fire, however willfully or negligently, should be answerable to this insolvent's creditors for what they lose by him. As this man's liability must stop somewhere, the law says it stops with the direct and immediate consequences of his wrong-doing, leaving it to a court and jury to determine what damages were direct and immediate, and what were only remote and consequential.

Farm buildings are sometimes destroyed by fire caught from locomotives. The railroad companies are of course liable for all damages caused thereby if the fire arose from any fault of theirs or of persons employed by them. It would be the fault of the companies if they neglected to use known and entirely practicable precautions. Whether they would be answerable if wholly free from negligence and default cannot be answered from any ascertained and uniform law. Generally we think they would be answerable. In some States this is provided by statute.

SECTION VII.

GAME ANIMALS.

WE have in this country no game laws but such as are intended to preserve from wasteful destruction animals valuable for food

or otherwise useful. It is a pity we have not more laws for this purpose, and that they are not better observed. Game animals which existed in great abundance almost everywhere in this country some years ago are now scarce everywhere, and in some regions destroyed, by the indiscriminate slaughter which has long prevailed.

A wild animal, whether beast, bird, or fish, belongs to nobody, and everyone may catch or kill it who can. But here again comes this question of the right to go upon the land. The wild birds on my farm are not mine. I have no better right to shoot or snare them than another. But no man has any more right to come on my land without my permission, to snare or shoot them, than for any other purpose. That is to say, he has no right at all. If a man stands in a road adjoining my farm and shoots a bird which is coming on my land I cannot say that he does me any wrong. But if the bird falls over the line he has no right to step a foot on my land to get the bird, and if he does so he is a trespasser.

It is common in some parts of our country to see signboards set up on the roadside, giving notice "no shooting allowed on these premises." The only practical meaning or effect of such notices is, that while one who walks peacefully over the land will not be prosecuted, one who shoots upon the land will be. But he cannot be prosecuted for shooting there or for killing wild animals there, but for being there without leave, that is, for trespassing on the land. So the owner of the farm does not own the fish in his ponds or streams until he catches them, but no stranger has any right to come over his land to his grounds. If such ponds or streams reach a highway any man may stand in the highway and fish for them. In many of the States, however, statutes have now been enacted protecting the owner's rights in these respects.

An animal that was originally wild, after it is caught and tamed is, with its progeny, as much property as a domestic animal.

SECTION VIII.

DOMESTIC ANIMALS.

THEY are as much the property of their owner as anything else which he owns. A farmer has certain rights to them and certain liabilities for them.

No one has a right to kill or injure them. If his neighbor's cattle trespass on his land he may *impound them*, being very careful to follow exactly the requirements of the law, for his ignorance or carelessness here may get him into trouble. Perhaps the difficulty or danger of making use of a remedy which may so easily be mistaken is one cause why impounding is not now so often resorted to as formerly. But the farmer on whose land cattle trespass may turn them into the road to go where they will. A kind regard for his neighbor would prompt him to give his neighbor such information as would enable him to recover his cattle, unless, indeed, they were notoriously breachy and their owner had been warned often enough. But one who turns them from his own land into the road is not bound to give this notice. For everyone who owns cattle is bound to keep them at home or suffer the consequences.

So it would be as to sheep, goats, swine, etc. As to hens, they cannot be impounded. Of course they can be driven away, but they must not be shot, even if their dead bodies were returned to their owners. It may be doubted, however, whether a jury—who determine all questions of damages in actions of trespass—would give much damage if their owner, who was in the habit of letting them get their food in his neighbor's garden, brought an action when their dead bodies were brought to him.

The owner of domestic animals is liable for any damage they cause, and one whose fields they break into may sue for the harm they do.

If he turns his oxen or other animals loose into the public highway, and there they injure anyone in person or property, he is answerable. Nor is it any defense that he did not know that they were particularly dangerous in disposition, nor is it any defense that the animals were not so, because he ought to have kept them at home.

Whether this applies to hens the law has not said that we know of, but it has said so very decidedly as to all four-footed animals, including one of the most troublesome—dogs. As to other animals it is a general rule that the owner of an animal that is kept at home and there injures a person, is not liable unless it can be shown that he had good reason to know that his animal was mischievous and should be kept in such a way that he would be harmless. But all dogs are mischievous by their very nature, and

their owner is liable for any injury they do and its direct consequences. Anyone may kill any dog who runs at him in the public highway or on his own land in a threatening way, or if he is wounding or chasing cattle or sheep in his own pastures. In States requiring that dogs should be licensed, if they are not licensed they are outlawed; and may be killed anywhere by any person who is where he has a right to be.

SECTION IX.

SALE WITH WARRANTY OF ANIMALS, OF SEEDS, AND OF FERTILIZERS.

IN our chapter on sales, section 4, we treat of sales with warranty. We would add here some statements of the law which have an especial reference to farmers.

1. OF ANIMALS.—Farmers often buy and often sell animals, and it is important to know when the sale is with warranty and when it is not. This is sometimes a difficult question. If the word warranty is used there is no question. But this word is not essential, and if it is not used there may still be a question whether there is a warranty. There is one rule stated in our chapter on sales of frequent importance. It is that if anything be bought for a special purpose and this purpose is made known to the seller, it is considered in law that the thing is sold with a warranty that it is fit for that purpose. This rule has been applied to the sale of a horse without express warranty.

Mere statements or declarations in circulars or advertisements, or those made in the course of conversation, would not amount to a warranty even if the buyer relied upon them and was deceived by them. But the law seeks to check the fraud which is often perpetrated in this way by the rule that, if the representations were made in the negotiation for the sale and formed a part of it, if they were intended to cause the sale and did help to cause it, then these representations would be a warranty in law with all the effects of a warranty, even if the seller made them honestly.

The warranty may be limited either as to its application or as to time. For example, a horse may be sold with warranty against lameness or against glanders, and then there would be no warranty against anything else. Or he may be sold with warranty to last only twenty-four hours, as is frequently said at sales of horses by auction. Then the horse must be returned for unsound-

ness or any other defect, or a claim be made for a breach of warranty, within twenty-four hours after the sale.

2. OF SEEDS.—Not only farmers but everyone who has a lot of ground no bigger than a table-cloth, or even a dozen flower pots in which he tries to grow flowers or fruit, knows what an annoyance it is to find the seeds he bought and sowed different from what they were bought for, or lifeless or worthless, and that season's cultivation lost. Only a farmer knows the extent of the loss which he may suffer from this cause. And here the law comes to his aid, and if farmers generally knew the remedy in their power and applied it generally, it might be hoped that this fraud might be lessened or punished. The rule that anything sold for a special purpose is sold with a warranty that it is fit for that purpose applies here. And it has been decided in some of our States, and we think would now be in all of them, that if a buyer asks a seller for seed of a particular sort or variety and he sells him seed as good seed of that particular sort or variety, and it turns out to be not of that sort or variety but of some other, or dead and worthless, the seller is liable to the buyer not merely to the extent of the price paid for the seed, but for all the direct damage which he may have suffered therefrom, as the cost of preparing the field for the seed or the difference in value between the crop which he raised and the crop which would, with reasonable probability, have been raised upon the field if the seed sown had been what it was sold for. And the seller will be thus liable without any express warranty, even if he had been honest and had bought the seed as that which he sold it for, and believed it to be that, and the fraud or mistake was not his own but the man's from whom he bought it.

We have no doubt this rule would be applied in the same way where one who bought young grafted fruit-trees as of a particular variety, and they were sold expressly as such, was deceived and injured in a similar way.

3. OF FERTILIZERS.—A great deal of fraud has been practiced in the sale of fertilizers. This is now much diminished by the better knowledge of the subject possessed by farmers and gardeners, and also by the laws of some of the States. It would always be safer for the buyer to insist on a warranty. But this should not be a warranty of the general quality and character of the article, for such a warranty would be of little practical use

except in extreme cases. The warranty should be as to the ingredients of which the article consists, and as to the percentage quantity of these. If it be a chemical fertilizer this is easily ascertained by a chemist. The most essential of these ingredients are phosphorus, nitrogen, and potash. These elements exist in artificial fertilizers under different forms. When the amount of each of them in a hundred weight of the article is known to the buyer, it is easy for him to acquire the knowledge necessary to judge of the efficacy and value of the fertilizer.

SECTION X.

HIRING OF HELP.

1. RIGHTS AND DUTIES OF HELP.—In England the law of master and servant some generations ago was strict, nor has it lost all this character yet. Our fathers brought over to this country much of this law, but it has entirely lost all its force in all our States. Now the relation of the hirer and the hired is purely one of contract. The hired man agrees to sell so much of his time, labor, or skill to the hirer, and the hirer agrees to pay so much money for what he buys. It is a contract of help and of payment for help, and both parties are held to their contract, and neither beyond it.

In the first place, both parties may make just such a bargain as they like. They may make a complete bargain concerning all items, or a partial one, or none at all.

In the next place, if a man works for a farmer with a partial bargain, or no bargain at all, but at the farmer's request or with his knowledge and acceptance, the law comes in and completes the bargain, or makes one for the parties. It does this on the principle that the working-man undertakes to do his work reasonably well, or according to any prevailing and acknowledged custom as to time and manner. And then that the farmer is bound to pay him a fair and reasonable price, measured by the custom of the time and place, if there is one applicable to the case, and by the judgment of the jury before whom the case comes.

A much more difficult question arises when a man who is hired to work on certain terms, for a certain time, works a part of the time as he ought to and then leaves his work and his employer.

Can he recover from his employer payment for the work that he has done? There is some conflict in the law about this—that is, in the decisions of the courts on this question—and therefore some uncertainty as to the law. This difficulty springs from a rule of law relating to what is called “entirety of contract,” which rule is, that if a party to a contract in which he engages to do one whole thing does only a part of it, he cannot claim payment for that part. In most cases this is perfectly reasonable. If a man agrees to sell a farm of a hundred acres for the price of \$10,000, he cannot say, I have concluded to sell only half my farm, and you must give me for that \$5,000. But where the whole thing consists of divisible parts, and to each part a proportionate part of the money can be applied, the rule is of course modified. Thus if A agrees to sell to B, and B to buy of A, one thousand bushels of potatoes of a certain quality at one dollar a bushel, if A delivers to B five hundred bushels and refuses to deliver the rest, B can say, I want my thousand bushels or none, and may then return to A the five hundred bushels received, and A has no claim on him. But he may choose to keep the potatoes received, and then he must pay for them the price agreed upon, and so he must if he has sold the five hundred bushels and cannot deliver them. But, on the other hand, he has a valid claim against A for anything he may lose by A’s failure to deliver him that other five hundred. If, for instance, potatoes have risen in value to one dollar and fifty cents a bushel, B has lost by not receiving that five hundred bushels two hundred and fifty dollars, and may deduct this from what he has to pay. If the same rule were applied to the case of a man who at the beginning of the year engaged to work for all that year at fifteen dollars a month, and who worked for five months and then left at the beginning of the hay-making season, and then wages were at thirty dollars a month, the hirer would pay him fifteen dollars a month for the time he worked, deducting therefrom whatever he lost by the necessity of paying higher wages, and whatever he lost otherwise by the hired man’s failure to perform his contract. Such is the view taken of the question by some eminent judges. But the greater part of our courts apply the rule strictly. They hold that if a hired man engaged for a year, leaves without sufficient cause at the end of the eleventh month, he forfeits all his wages and has no claim against the hirer for any part of them. All

courts agree that if the hired man leaves because of insufficient food, ill-treatment by the hirer, disabling sickness, or other sufficient cause, the hirer is bound to pay him for the time he worked.

It may be added that it is important for the farmer to know and regard the rules pointed out in Chapter XII on the statute of frauds, especially in section 3.

2. LIABILITY OF THE FARMER FOR THE WRONG-DOING OF HIS HELP.—This liability rests upon an ancient rule of law, "What a man does by another he does by himself." Thus if a farmer ordered his hired man to steal his neighbor's sheep or wood, the hired man would be held as a thief, and the hirer would be responsible also. But the hirer would not be responsible for the thefts of his help without his order or assent. All this is plain enough. The difficulty comes afterwards. It comes from the extension of the rule which makes an employer responsible for the negligence or ill-doing of one employed by him while actually engaged in doing what he is lawfully employed to do. The cases on this subject are numerous and some of them severe. Thus, if a farmer sets his help to cutting his wood and tells him distinctly where his line is, and the man forgets or mistakes and goes beyond that line and cuts his neighbor's wood, the farmer is responsible. If the hirer directs his help to build a fire in a safe place to burn up his rubbish, and charges him to take thorough care of it, and the man goes to sleep and lets the fire run into his neighbor's land, the farmer is responsible for all that this fire destroys.

SECTION XI.

HIRING OF A FARM.

We have considered the case of purchasing a farm. The great majority of farmers own their farms. But there are many exceptions. A man may hire a farm for a term of years, paying rent, or on shares, or on a tenancy which may be put an end to at the will of either party.

1. HIRING BY LEASE.—In our chapter on leases we have given the general rules and principles governing leases, together with a variety of forms. We will now give some further rules and offer some suggestions upon points which it may be useful for a farmer to know and understand.

Any general description will suffice to put the tenant in possession of the land intended to be hired, if it be capable of distinct ascertainment and identification. And for this purpose certain words in common use, such as farm, land, house, field, wood-land, and the like, would be held to have a wide meaning. When such general and comprehensive terms are employed, all such things as are usually comprehended within their meaning will pass to the hirer by the lease, unless the language of the lease or the circumstances of the case show plainly that the intention of the parties was different. And inaccuracies as to quantities, names, amounts, etc., will be rejected if there is enough left to make the purposes and intentions of the parties certain. If the parties have undertaken to make a written bargain and have not made it, the law will not undertake to make one for them. But it will do all that can reasonably be done to carry into full effect, and exactly as was intended, the written bargain they have made.

Nevertheless there is a rule, not of law, but of common sense and prudence, which is applicable to everybody in all matters, but to no persons more so than to farmers in relation to their farms. This rule is, that it is at once easier and wiser to make all bargains and contracts such as will avoid questions and doubts than it is to answer these after they arise.

2. RENEWAL OF LEASE.—The lessor is not bound to renew a lease without an express covenant to that effect, which may be in the lease or in a separate instrument. A mere understanding or verbal promise is not sufficient in law, whatever it may be in honor or in morals.

The law does not favor such covenants, because they tend to perpetuity. But if there be such a covenant, and it is definite and reasonable, the law will sustain it. A covenant to "renew this lease under or with the same covenants" does not require that the new lease should contain the same covenant of renewal. For this would make the lease indefinite and perpetual at the pleasure of the hirer. But the covenant to renew covers all the other covenants and agreements of the lease. A covenant to "renew on such terms as may be agreed upon" is void for uncertainty.

3. REMEDY FOR NON-PAYMENT OF RENT.—Leases now in use almost always contain provisions on this subject, which are, generally, that the lessor may enter and expel the tenant if the rent

be not duly paid, or that the tenant forfeits the lease and all rights under it by non-payment of rent. Provisions to this effect are expressed in various ways, but are substantially the same everywhere, and no particular words are necessary for this purpose. But it should be known and remembered that the law is exact and even punctilious as to the exercise of this right of reëntry. It may be said in general, that to justify reëntry in case of forfeiture a demand must be made for the rent due and for the precise sum, and on the very day on which it becomes due and payable, and of the tenant himself, or if a place be prescribed in the lease where it is payable the demand must be made at that place, and if no place be prescribed then of the tenant himself, or at a conspicuous or notorious place on the premises leased. Of course when the rent is due it becomes a debt, for which all the ordinary means of recovering a debt may be resorted to. But if there be no clause of forfeiture for non-payment of rent, the lessor has not, at common law, a right of reëntry for this cause. See, however, the chapter on Leases as to the remedy given by statute.

4. **TENANT'S RIGHT TO VACATE THE PREMISES AND GIVE UP THE FARM.**—As the owner and lessor may expel the hirer and terminate the lease if he does not pay his rent, so the hirer has certain rights in this respect as against the owner. In England, from whence we derive our law, this law is very severe against the tenant. There the landlord is under no obligation to inform an intending lessee of defects or objections which he knows and the lessee neither knows nor has means of knowing, although the defects are entirely incompatible with such use of the premises as the lessor knows the lessee intends to put the farm to and indeed hires it for. The rule in this country may not be entirely settled. But we are decidedly of the opinion that a lessee who is so deceived, when he finds that he cannot cultivate the farm or make use of it in the manner he intended, may throw it up and the lessor has no claim against him. To have this effect, however, the conduct of the landlord must amount, practically, to fraud. For defects that could have been ascertained by a reasonably careful examination, or for errors of judgment as to the use that could be made of the farm, the tenant has no remedy.

Still more certain are we that the lease is cancelled and all right to rent is lost by any violent outrage or indecency on the

part of the lessor, or any intentional and material interference by him with the tenant's proper use and enjoyment of the farm.

5. APPORTIONMENT OF RENT.—The owner of a farm which he has let to a tenant can sell it as freely as if it were not leased. But he sells his farm subject to the lease, for he cannot impair the rights which the lessor has under the lease. The buyer becomes the lessor and has all the original owner's rights and is subject to all of his obligations which run with the land. So the owner may sell a part of the farm, or may sell the whole in parts to different purchasers, but this does not extinguish the obligations of the hirer or lessee, nor does it transfer them all to any purchaser. So also the owner retaining his ownership may assign a portion of the rent—as one-fourth, or one-third, or one-half, or any other portion—to an assignee. Whether the owner sells a part of the farm, or the whole in parts to different purchasers, or assigns a part of the rent or the whole in parts, there must be *an apportionment of rent*. The tenant must pay the same rent as before, but now he pays it to the persons entitled to it, in the proportion in which they are entitled to it.

If the owner sells his farm in undivided parts, as one-half or one-third to one buyer and the residue to another, but without boundaries, there is no difficulty in apportioning the rent in the same way. But suppose the owner sells a part of the farm by boundaries, as if he sells certain fields or lots, the rent must now be apportioned according to *value* and not according to *quantity*. Here again the tenant has no other interest than to ascertain to whom he must pay his rent. If the owners and the buyers of the fields or lots agree together as to the apportionment of the rent, the lessee is bound by their agreement, because it is of no importance to him to whom he pays his rent. If they do not agree, it is a question of fact which a jury must settle for them.

So there may also be an apportionment by time, as when the lessor dies in the middle of the term for which the farm is leased. The lessee is now liable to the executors or administrators of the deceased for so much of the rent as accrued before he died, and to the heir afterwards, or to the heirs in the proportions in which they inherit the farm.

A tenant of a farm, if his lease is terminated by any event which was uncertain, and which he could neither foresee nor

control, is entitled to the annual crop which he sowed or planted while his interest in the farm continued.

6. CULTIVATION OF THE FARM.—In our chapter on leases it is said that the tenant of a farm is bound, without express covenant, to manage and cultivate the same in such a manner as good husbandry and the usual course of management of such farms in his vicinity require. But it is seldom wise to leave this matter wholly unprovided for by express agreement. The owner and the hirer of a farm generally have an understanding on this subject, and this should be reduced to writing in the lease. Perhaps if nothing else be understood between them but customary and reasonably good cultivation, it is safe enough to leave this to the law. But more may be agreed upon, and especially there may be a distinct bargain as to certain crops, or a certain rotation of crops, or the cutting of wood, or what fields should be broken up or sown, and what, when, and where manure shall be placed, or what land sown to grass, etc. All these things should be most distinctly and carefully set forth in the lease as agreed upon. For no merely verbal agreements would have any effect. For here, as elsewhere, in accordance with the important rule laid down in Chapter XLIII, Section V of this volume, no evidence would be received to vary the lease or add to or diminish its obligations.

For the purpose of showing how and where special stipulations may be inserted we give the following form. The clause concerning renewal may be omitted if there is no agreement.

(346.)

A Form of a Lease of a Farm.

This Indenture, Made the _____ day of _____ in the year of our Lord one thousand nine hundred and _____.

Witnesseth, That I, _____ (*name and residence of the lessor*) do hereby lease, demise, and let unto _____ (*name and residence of lessee*) a certain farm or parcel of land, in the city (or town) of _____ county of _____ and State of _____ with all the buildings thereon standing, and the appurtenances to the same belonging, bounded and described as follows:

(The premises need not be described quite so minutely or fully as is proper in a deed or mortgage of land, but must be so described as to identify them perfectly, and make it certain just what premises are leased.)

To Hold for the term of _____ from the _____ day of _____ yielding and paying therefor the rent of _____

And said lessee does promise to pay the said rent in four quarterly payments on the _____ day of _____, etc. (*or state otherwise just when the payments are to be made*) and to quit and deliver up the premises to the lessor or his attorney, peaceably and quietly, at the end of the term, in as good order and condition, reasonable and proper use thereof, fire and other unavoidable casualties excepted, as the same now are or may be put into by the said lessor, and to pay the rent as above stated, and all taxes and duties levied or to be levied thereon, during the term, and also the rent and taxes, as above stated, for such further time as the lessee may hold the same; and not make or suffer any waste thereof, nor lease nor underlet, nor permit any other person or persons to occupy or improve the same, or any part thereof, or make or suffer to be made any alteration therein but with the approbation of the lessor thereto, in writing, having been first obtained; and that the lessor may enter to view and make improvements, and to expel the lessee, if he shall fail to pay the rent and taxes as aforesaid, or make or suffer any strip or waste thereof, or fail to fulfill any of the obligations hereinafter recited. That is to say, the said lessee hereby covenants and agrees that he will cultivate the said farm during all his possession of the same, in such manner as good husbandry requires, and in especial, that he will (*here insert carefully and fully all the agreements which the parties have made respecting the cultivation of the farm or to which the lessor intends to bind the lessee, and to which the lessee is willing to be bound*). And the said lessor on his part covenants that he will, at the request of the said lessee, renew the lease for the period of _____ years, to begin at the expiration of his lease.

(Signature.) (Seal.)

(Signature.) (Seal.)

Signed, Sealed, and Delivered in Presence of

Another form of farm lease will be found among the forms at the end of the chapter on Leases.

7. **HIRING ON SHARES.**—It is a common practice in many parts of this country, for the owner of a farm to let it "on shares." In some countries the great body of the land is let in this way; the proprietor finding for the use of the occupier, such cattle, seeds, implements or tools as may be agreed upon, and the tenant or occupier of the land paying to the proprietor the agreed proportion of the produce. This proportion varies in those countries with varying circumstances, from one-tenth to one-half; being generally from one-third to one-half. If parties in this country make a bargain of this sort, and wish to reduce it to writing, the foregoing form of a lease will answer their purpose, provided they write, in the place of the agreement about rent in that form, what each of the parties agrees to do by their bargain; the one as to what the lessor shall provide for the use of the hirer, and

the other as to what share or proportion of the produce the lessee shall pay or deliver to the lessor or owner, and how it shall be delivered.

Other rules as to the rights and obligations of farmers as owners or hirers of a farm, or lessors and lessees, or landlord or tenants, will be found in our Chapter XXXII on leases. Among them are the rules relating to repairs, and the obligation of either party to make them, rebuilding in case of fires, assignment of lease, or underletting of the whole or a part of the farm, the rights of out-going tenants to crops which he sowed and which mature after he leaves the farm, tenancy at will, and notice to quit; and other like points. For the law on these subjects we refer to that chapter.

CHAPTER XLIV.

PURE FOOD AND DRUG LAW.

UNDER the provisions of this law—Act of June 30, 1906, as subsequently amended—the manufacture within any Territory or the District of Columbia of any article of food or drug which is adulterated or misbranded within the meaning of the Act, and the traffic in articles so adulterated or misbranded, including the importation from foreign countries, and the exportation thereof, is prohibited under heavy penalties. Rules and regulations for carrying out the provisions of the Act are made by the Secretary of the Treasury, Secretary of Agriculture, and Secretary of Commerce and Labor. Examination of specimens of food and drugs are made in the Bureau of Chemistry of the Department of Agriculture, or under the direction and supervision of the Bureau. In case any such specimens are found to be adulterated or misbranded notice is given to the parties interested, who have an opportunity to be heard, and if provisions of the Act are found to be violated, facts are certified to the District Attorney for action.

“The term ‘drug’ as used in this Act includes all medicines and preparations recognized in the United States Pharmacopœia

or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of either man or other animals. The term 'food' includes all articles used for food, drink, confectionery, or condiment by man or other animals, whether simple, mixed, or compound."

"An article shall be deemed adulterated:

"In the case of drugs:

"1. If, when sold under or by a name recognized in the United States Pharmacopœia or National Formulary, it differs from the standard of strength, quality, or purity, as determined by the test laid down in the U. S. Pharmacopœia official at the time of investigation. *Provided*, that no drug defined in the U. S. Pharmacopœia shall be deemed to be adulterated under this provision if the standard of strength, quality, or purity be plainly stated upon the bottle, box, or other container thereof, although the standard may differ from that determined by the test laid down in the U. S. Pharmacopœia.

"2. If its strength or purity fall below the professed standard or quality under which it is sold.

"In the case of confectionery:

"If it contain terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt, or spirituous liquor, or compound or narcotic drug.

"In the case of food:

"1. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

"2. If any substance has been substituted wholly or in part for the article.

"3. If any valuable constituent of the article has been wholly or in part abstracted.

"4. If it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed.

"5. If it contain any added poisonous or other added deleterious ingredient which might render such article injurious to health; *provided* that when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservation is necessarily removed mechanically, or by maceration in water, or otherwise, and

directions for the removal of said preservative shall be printed on the covering or the package, the provisions of this Act shall be construed as applying only when said products are ready for consumption.

"6. If it consists in whole or in part of a filthy, decomposed, or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter."

"The term 'misbranded' shall apply to all drugs, or articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein, which shall be false or misleading in any particular, and to any food or drug product which is falsely branded as to the State, Territory, or country in which it is manufactured or produced."

"In the case of drugs an article shall also be deemed misbranded:

"1. If it be an imitation of, or offered for sale under the name of, another article.

"2. If the contents of the package as originally put up shall have been removed in whole or in part, and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any of such substance contained therein.

"3. If its package or label shall bear or contain any statement, design or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein, which is false and fraudulent.

"In the case of food:

"1. If it be an imitation of, or offered for sale under the distinctive name of, another article.

"2. If it be labeled or branded so as to deceive the purchaser, or purport to be a foreign product when it is not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been

placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanilide, or any derivative or preparation of any of such substances contained therein.

"3. If in package form, the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count: *Provided*, however, That reasonable variations shall be permitted, and tolerances and also exemptions as to small packages shall be established by rules and regulations made in accordance with section three of this Act.

"4. If the package containing it, or its label, shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular; *Provided*, that an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

"a. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced.

"b. In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word 'compound,' 'imitation,' or 'blend,' as the case may be, is plainly stated on the package in which it is offered for sale; *Provided*, that the term 'blend' as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only; *And provided further*, that nothing in this Act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except in so far as the provisions of this act may require to secure freedom from adulteration or misbranding.

"c. No dealer shall be prosecuted under the provisions of this Act when he can establish a guaranty signed by the wholesaler,

jobber, manufacturer, or other party residing in the United States, from whom he purchases such articles, to the effect that the same is not adulterated or misbranded within the meaning of this Act, designating it. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines and other penalties which would attach in due course to the dealer under the provisions of this Act.

"Any article of food, drug, or liquor that is adulterated or misbranded within the meaning of this Act, and is being transported from one State, Territory, District, or insular possession, to another for sale, or, having been transported, remains unloaded or unsold or in original unbroken packages, or if it be sold or offered for sale in the District of Columbia or the Territories or insular possessions of the United States, or if it be imported from a foreign country for sale, or intended for exportation to a foreign country, is liable to be seized and confiscated, and may be destroyed or disposed of, and the proceeds, less the costs, paid into the treasury of the United States. But the owner may prevent such confiscation or sale by a good and sufficient bond that such articles are not to be sold or otherwise disposed of contrary to the provisions of this act.

"The Secretary of the Treasury shall deliver to the Secretary of the Board of Agriculture, from time to time, samples of foods and drugs which are being imported in the United States for sale, or offered for exportation; and if found adulterated or misbranded within the meaning of this Act, or dangerous to health, may refuse admission; but pending the decision on this matter, the goods may be delivered to the owner on the deposit of a good and sufficient security."

It is provided that the act or omission of an agent, if within the scope of his authority, shall be deemed the act of the person or corporation whom he represents.

CHAPTER XLV.**THE AUTOMOBILE.****RIGHTS AND DUTIES OF OWNERS.**

The extensive use of the automobile which has come about since this book was originally written makes it desirable to add a few words as to the rights and duties of owners and users of these vehicles.

Generally speaking, these rights and duties relative to other users of the highway are the same as those of horse-drawn vehicles, subject to such regulations as the dangerous qualities of these powerful machines have rendered necessary for the protection of the public. On the one hand the motorist is entitled with all other members of the public to the free use of the public highways and streets; on the other hand he has no superior right of way, and cannot by blowing his horn require every one else to make way for him.

Like all other drivers of vehicles upon the public highway, the motorist is bound to use reasonable care to avoid injuring others. What is reasonable care varies with the situation in which he is placed and the degree of danger involved; what, for instance would be a reasonable rate of speed on an open country road might be recklessly excessive in a crowded city street. The very fact, however, that the machine which he operates is so powerful and capable of such high speed imposes upon him at all times the duty of a special degree of care proportionate to these dangerous qualities.

In most of the states the rate of speed permitted on the highways is regulated by statute, sometimes by specifying the maximum number of miles allowed per hour, and sometimes, as in Massachusetts, by prohibiting a rate of speed "greater than is reasonable and proper, having regard to traffic and the use of the way, and safety of the public," but specifying certain rates of speed as *prima facie* excessive.

Driving at a rate of speed in excess of the legal limits, when an accident results, is *prima facie* proof of negligence, and where the death of a person is caused by wilful and reckless overspeed-

ing the driver may be convicted of manslaughter. It is no defense in such a case that after the person injured was seen every effort was made to avoid the accident.

Keeping within the limits prescribed by statute does not however exempt the driver from all further responsibility on this point. "On the contrary" says the Court in a recent case, "he still remains bound to anticipate that he may meet persons at any point in the public street, and he must keep a proper look-out for them and keep his machine under such control as to enable him to avoid collision with another person, using proper care and caution, and if necessary, he must slow up and even stop. No blowing of a horn or of a whistle or ringing of a bell or gong, without an attempt to slacken the speed is sufficient if the circumstances demand that the speed be slackened or machine stopped, and such a course is reasonably possible. The true test is that he must use all the care and caution which an ordinary prudent and careful driver would have exercised under the same circumstances."

A pedestrian has the same rights in the street or highway as an automobile, and is not restricted to the use of cross-walks. The motorist approaching a pedestrian in the traveled part of a highway should give warning with his horn or bell, and if necessary, slow up or stop. He is held to a special degree of care in the case of children and of old or infirm persons. On the other hand he has a right to assume that any person using the highway is in full possession of the senses of sight and hearing, and may act on that assumption until he has reason to believe the contrary. Ordinarily, a pedestrian has no right of way superior to that of the driver of a vehicle; each may continue his own course, with relative regard for the other's rights of travel, and the driver of an automobile is not bound to stop unless it is necessary to prevent a collision. Not unfrequently, a pedestrian becomes frightened or confused in his efforts to avoid an approaching automobile. In such a case it has been held that the driver should not proceed, zigzagging back and forth in the effort to avoid a collision, but should bring his machine to a stop.

As the attention of the driver must of necessity be specially concentrated on what is in front of him he is not, as a general rule required to keep a look-out backward to see whether others are approaching in his rear; but to back his machine without

looking behind for the safety of others, especially when close to a cross-walk in a city street is gross and inexcusable negligence.

The driver of an automobile is not bound to slow up in passing a street car when in motion, lest a passenger should jump off in his path, but when a car is standing at a customary stopping-point he is bound to know that persons have a right to pass and re-pass to and from the sidewalk and he must slow up and take special care to avoid an accident. On the other hand a person boarding a car and seeing an automobile approaching must on his part take reasonable care to avoid being run over.

As the safety of other users of the highway requires the full and constant exercise of the senses of sight and hearing on the part of the driver of an automobile it has been held that for a man blind of one eye and of imperfect vision to attempt to operate an automobile on a public road is of itself evidence of negligence. For substantially the same reason it is held to be gross negligence for a man to operate an automobile when under the influence of intoxicating liquor, and in most of the States a heavy penalty is imposed for doing so.

When approaching an intersecting street or a bridge or a sharp turn or curve in the road or a steep declivity the driver is required to slacken speed and to give due warning of his approach by sounding his horn or other signaling device.

As an automobile may be halted nearer a railroad track than a horse can usually be driven with safety, the driver has a better opportunity to look for approaching trains. In approaching a railroad crossing, therefore, the law holds the driver "rigidly to such reasonable care and precaution as go to his own safety and that of the traveling public," and it has been held that before attempting to cross the track he is bound to obey strictly the rule to stop, look, and listen.

When an automobile is left unattended in the street the laws of some states require that it shall be chained or locked to prevent its being started by unauthorized persons, but in the absence of such legislation it is usually sufficient to shut off the power, and if a stranger afterwards starts the machine, and an accident results the owner will not be responsible.

In the country, domestic animals of all kinds are often met with on the highway, and many motorists seem to suppose that they are there at their peril, and that they themselves have no

duty in relation to them or at least that all that is required of them under any circumstances is the sounding of the horn. This is a mistake. The owners of such animals when the latter are lawfully on the highway have the same rights as other users of the highway, and in all cases they are entitled to be protected against wanton or reckless acts by others. The motorist is bound to use every reasonable precaution to avoid running down such animals, dogs included.

The relative rights and duties of motorists and drivers of horse-drawn vehicles have frequently come in question. Both are equally entitled to use the highway and the mere fact that the presence or the operation of the automobile may cause the horse-man annoyance or even danger gives the latter no legal ground for complaint. Even though the horse be frightened by the sight or sound of the automobile and an accident results, the motorist will not be responsible unless there has been some want of care on his part. If, however, he sees that the horse is frightened, or if the driver warns him that there is danger, he is bound to do everything in his power to prevent an accident by slowing down or stopping altogether, or even, if necessary, by stopping the operation of the engine. It is provided by statute in most of the States that the driver of the horse may require the motorist to take these measures, by raising his hand or otherwise signaling that his horse is frightened, but it would seem that the obligation of the motorist in this regard is substantially the same in the absence of any statutory requirement.

Like the drivers of all other vehicles the motorist is bound to conform to "the law of the road"—that is, in meeting another vehicle he must turn out to the right beyond the middle line of the traveled part of the road, and in passing another vehicle going in the same direction he must turn to the left. In England and in Canada the rule is the reverse of that in this country. When about to pass another vehicle the motorist must give notice by sounding his horn and the vehicle in front must then turn out to the right so as to allow him to pass unless there is room enough to pass without doing so. This rule, however, is subject to the qualifications that if the road is narrow the vehicle in front may continue on its way until it reaches a place where it can conveniently turn out and allow the other to pass.

For an automobile, or other vehicle, to be running on the wrong side of the road is *prima facie* proof of negligence on the part of the driver, but this presumption may be rebutted by showing that he had some valid reason for his action, as, for instance, that the road was obstructed, that he was obliged to turn aside to avoid collision with some other vehicle, or that he was about to stop on that side of the road or to turn into a side road; but it is not a sufficient excuse that the road on the right side is rough or not in good repair, unless it is actually dangerous; and the fact that a vehicle is on the wrong side of the road does not absolve the drivers of other vehicles from the obligation to use all reasonable care to avoid collision with it. Both in this and in other cases it is a general rule that, without regard to the original fault, the party who has "the last clear chance" to avoid an accident is the one on whom the final responsibility falls.

While the motorist is bound under all ordinary circumstances to obey the law of the road as well as all other statutory requirements, emergencies may arise where too rigid adherence to rules is unjustifiable. In all cases he must exercise ordinary fairness and good judgment in reference to the rights of other users of the highway. As was said by an eminent judge, "The law expects the driver to use common sense."

In case of an accident the motorist is generally required by law to stop and to give his name and address, and the place of registration and number of his automobile, for the purpose of future identification. Neglect or refusal to do so will subject him to a heavy penalty.

When the automobile is operated by some person other than the owner questions frequently arise as to the liability of the latter in case of accident. In such case the mere fact that he is the owner does not make him liable; it must appear further that the person actually in charge of the machine was employed by him and acting in his service. Even the fact that the operator is his son or daughter does not make him responsible. The question still arises: Was the child engaged in the parent's business or acting under his instructions or control, or at his request? Thus where a daughter took a party of friends to ride in her father's automobile, without his authority, it was held that he was not responsible; and the same decision was made where a son was permitted to use the father's automobile for purposes of his own.

On the other hand when a man had bought an automobile for the general use of his family, which was operated only by his minor son, and his wife had general permission to use it without special request, it was held that the son when taking his mother to ride was acting in accordance with the general instructions of his father, express or implied, and that the father was responsible for his negligence.

Nor is it sufficient that the general relations of employer and employee subsist between the parties. The automobile owner is not in all cases responsible for the acts of his chauffeur. It is only when the latter is acting within the scope of his employment—when he is acting under his employer's directions or in the performance of his business that the employer is responsible for his acts or his negligence. Thus, when the chauffeur goes in his employer's automobile on a pleasure ride or on his own business the employer is not responsible. So, when a chauffeur was sent by his employer on an errand and he went first in another direction for a purpose of his own and there met with an accident it was held that his employer was not liable to the person injured. So also, when one borrows an automobile the owner is not responsible for any accident while it is under the control and management of the borrower.

As these powerful machines would endanger the safety of other users of the highways unless managed with care and skill their use has been subjected to regulation in nearly all of the States; the machines must be registered and numbered, the operators licensed, the speed limited, the use of lights regulated, etc. These statutes vary greatly in their provisions and are constantly changing; it would be impracticable for us to give even an abstract of them sufficiently full to be of practical value. At the same time it is extremely important for every owner and operator of an automobile that he should not only be thoroughly familiar with the laws of his own State on this subject, but that before going into another State he should ascertain what the laws of that State require, especially on the subject of registration, operator's license and speed limits. By so doing he may save himself great annoyance and expense from unintentional violation of law. Copies of the laws on this subject can usually be obtained by application to the proper authorities at the State capital.

The most important of these statutes are those requiring the registration of automobiles and the display upon them of the registration numbers. The results of failure to register—aside from the penalty imposed—depend upon the terms of the statute. Thus, for example, under the earlier statute of Massachusetts such failure was treated only as evidence of negligence, but under a later statute which provided that no automobile shall be used on a highway that is not registered as required by law it was held that the operator of an unregistered automobile is a mere trespasser on the highway and that other users of the highway have only the duty not to injure him by wantonness or recklessness. Accordingly in such cases it was held that none of the occupants of the automobile could recover in case of accident, even if they were not aware that it was not registered. By a still later statute, however, it is now provided that failure to observe the registration laws cannot be pleaded in defense unless the plaintiff was the owner or operator of the vehicle, or knew that the law was being violated.

Failure to obtain an operator's license, on the contrary, is held to be only evidence of negligence, and does not of itself deprive the operator or the owner of the right to recover for any injury due to the negligence of another where want of skill on the part of the operator himself did not contribute to the accident. The same principle is applied in other cases of breach of statutory regulations such as the failure to carry lights or to conform to the law of the road. If an accident is due wholly or in part to the failure to conform to any such regulation the motorist will be held liable in damages to the person injured; and if he himself or his machine is injured and such failure on his part has contributed to the accident he will be unable to recover damages, even when the accident resulted primarily from the negligence of the other party; but where the accident is in no part attributed to the failure to comply with the law, such failure will be no bar to his recovery. This doctrine of contributory negligence applies also to all other kinds of negligence as well as to the failure to comply with statutory regulations—where the party claiming damages has himself, been guilty of negligence he cannot recover.

The statute usually requires that the motorist shall always have with him when operating his machine both the certificate of

registry of his automobile and his operator's license, and failure to do so subjects him to a penalty.

An automobile may be insured against damage or destruction by fire whether occasioned by any external cause or by ignition or explosion in the machine itself, against loss or damage while in course of transportation by land or water, against injury from collision with other objects or other accident, and against theft.

The owner may also be insured against claims for damages for death, or for injury to the persons or property of others, occasioned by collision with his machine.

CHAPTER XLVI.

WORKMEN'S COMPENSATION LAWS.

UNDER the common law an employer was responsible for accidental injuries suffered by his employees only when the accident was due to some negligence on his part, or on the part of some one to whom he had entrusted the superintendence of his business. In an action for damages resulting from such an accident not only was the employee required to prove the fact of the employer's negligence but the employer might, among other things, plead in defence, (1) contributory negligence—that is, that the accident was due in part to the negligence or carelessness of the employee; (2) voluntary assumption of risk—that is, that the employee, knowing that there were certain dangers incident to the work in which he was to be engaged, voluntarily entered upon the employment and thereby assumed the risk of any injury not directly traceable to the employer's negligence, and (3) the fellow servant doctrine—that is, that the accident was due to the carelessness or negligence of a fellow employee for whose conduct the employer was not responsible.

The results of this system were extremely unsatisfactory. Both the theory of the employer's negligence as the ground for compensation to the employee, and the defenses which the employer was allowed to set up, whatever may have been the case at an earlier day, are admittedly inapplicable to modern industrial conditions.

The first changes in the law merely increased in certain respects the employer's responsibility, making him answerable to his employees for the negligence of other employees entrusted with the duty of superintendence, and for defects in the machinery and appliances furnished for the performance of the work. This was the substance of the "Employers' Liability Laws," enacted in England and in a considerable number of the States.

These laws, however, failed to effect the object desired. On the one hand there were a very large number of industrial accidents not directly traceable to the negligence of either the employer or the employee, and for which the employee therefore could recover no compensation, while in any case the expense of prosecuting the employee's claim usually absorbed a large part of any sum finally recovered. On the other hand there was no established rule for compensation, and the employer often had to pay excessive sums awarded by sympathetic or prejudiced juries. There resulted a growing sentiment that compensation for industrial accidents should be put upon an entirely different basis and that the best practical way of dealing with the matter was to treat such accidents as incident to the business, making the employer primarily responsible in all cases, without regard to the question of negligence. In this way compensation for injuries would form a regular part of the cost of conducting the business, and would ultimately be paid by the public as a part of the cost of production. An essential part of the plan also was the establishment of a definite basis for compensation for injuries of different kinds, the amount in each case depending upon the character and the degree of the injury. The result is the "Workmen's Compensation Laws." Laws of this kind have now been enacted in a large majority of the States in the Union. While they are all based upon the same general principles, they vary widely in their scope and in their details. It would be impracticable to give them in full in a work of this kind, but we give here a general view of the subject, followed at the end of the chapter by brief abstracts of the laws of the several States.

FIRST—THE SCOPE OF THE LAW.

In only a few States have the Workmen's Compensation Laws been made absolutely obligatory. In a large majority it has, for

constitutional reasons, been made optional with the employer, in form at least, whether to accept the provisions of the law or not. We say, in form, because in every such case the law is so drawn as to put at a distinct disadvantage any employer who does not accept it. This is usually done by providing that the employer who does not adopt the compensation system shall be deprived of the three special defenses above mentioned, but that this provision shall not apply to those who accept it. Where the employer accepts, his employees are put to a similar election, for if they choose to stand outside of the law their employer may set up any of the above-named defenses against them. By accepting the compensation law both parties waive all other legal remedies and consent to be governed exclusively by its provisions.

In some of the States acceptance of the law is presumed unless notice to the contrary is given to the Industrial Board or other state officials having jurisdiction over the operation of the law. In others, the employer must file a written acceptance. He must then notify his employees of his acceptance of the law and post notices of such acceptance in his factory or other place of business; the acceptance of the employees is then conclusively presumed unless they give written notice to the contrary. Provision is also made for the subsequent withdrawal of assent.

In most of the States there are limitations to the application of the law. In a few, as in Louisiana, New York, New Hampshire, and Washington, it is limited to certain enumerated "hazardous" trades or occupations; although in New York the list is so comprehensive that the limitation is more nominal than real. In other States the provisions of the law do not apply to employers of less than a specified number of employees, varying from two to ten, or of casual employees or outworkers. In others, as in Massachusetts, there is an express exemption of employers of domestic servants or of farm laborers.

Compensation is denied in many States, when the injury is due to the wilful intention of the employee to injure himself or another, or where it is due to his intoxication, or to his neglect to use safeguards against accidents, which are provided for him. Accidents due to "serious and wilful misconduct" or to "wilful misconduct" are also excepted. Under the former clause it is held that the word "serious" applies to the misconduct itself, not to the actual consequences of it; accordingly not every breach of

rules deprives the employee of compensation. The word "wilful" imports that the conduct was deliberate, and not merely a thoughtless act done on the spur of the moment, or as the result of some pressing emergency. But where a workman intentionally violates an express order made solely for the protection of employees, and which he fully understands, he is guilty of "serious and wilful misconduct."

SECOND—NATURE AND EXTENT OF THE LIABILITY.

Even under the compensation law the employer is not the insurer of the employee's safety at all times or under all circumstances. His liability extends only to "personal injury sustained by an employee arising out of and in the course of his employment." This is the language of the Connecticut statute, and in substance it is found in the statutes of all the other States. On the other hand it is sometimes provided that when the injury is due to the serious and wilful misconduct of the employer double the amount of the usual compensation shall be paid to the employee, and this clause, it is held, is not limited to acts done with the positive intention of inflicting injury, but includes reckless acts evincing utter disregard of consequences, and even persistent neglect to remedy dangerous conditions of which the employer has actual knowledge. In the English statute, and in those of a considerable number of the States, a further limitation is introduced—the injury must be "accidental," or "caused by accident." The most important effect of these terms is in relation to claims for injury caused by disease. Where the word "accident" is not used, it is usually—though not always—held that death or injury from disease is included. Thus, the Supreme Court of Massachusetts say, "It is clear that personal injury under our act includes any injury or disease which arises out of and in the course of the employment, which causes incapacity for work, and thereby impairs the ability of the employee for earning wages." Accordingly, it was held in that case that loss of sight resulting from an attack of optic neuritis induced by poisonous gases escaping from furnaces which the workman was tending was a "personal injury" within the meaning of the act. In these States death or injury from "occupational diseases," such as lead poisoning, is placed upon the same level as that caused by external violence. On the other hand, where the word

"accident" is used compensation for the effects of disease is denied, unless the disease results from some actual physical injury. The statutes of Iowa, Louisiana, New York, Vermont, and some other States exclude liability for disease in express terms.

In this connection "the word 'accident' is used in the popular and ordinary sense of the term as denoting an unlooked for mishap, or an untoward event which is not expected or designed;" and it is said that "where no specific time or occasion can be fixed as the time of the alleged accident there is no 'injury by accident' within the meaning of the act." Accordingly, when a workman after ten days' service in a bleachery was affected by a rash caused by contact with damp goods it was held that he was not injured by accident. So, where, as the result of years of labor, a man finally breaks down and has to give up work. But in an English case it was held that where a man died from a disease called "anthrax" as the result of a specific poison absorbed in the course of his employment as a wool sorter, his death was accidental. And under the terms of an accident policy it has been held that death due to glanders contracted by a man in the course of his employment was accidental. The acceleration or aggravation of a preëxisting disease or infirmity is an "injury caused by accident."

Sunstroke, except under peculiar circumstances is generally considered as a disease. Frostbites, too, have generally been held to be one of the natural incidents of a cold climate, not "arising out of the employment," and not "accidental" injuries. But when the nature of the employment is such as to expose the workman in a peculiar degree to the effects of heat or cold he may be entitled to compensation; as where a sailor, painting on the outside of a ship under a tropical sun, suffered from the effects of the sun's rays increased by reflection from the side of the vessel. So heatstroke caused by working in front of a furnace is held to be an accidental injury.

If the original injury is one for which the employer is liable he will be liable also for the incidental results of the injury; as for example where death results from the use of an anæsthetic in an operation rendered necessary by the accident. So, where a workman lost the sight of one eye by the spattering of hot metal, and at the hospital, in a fit of insanity caused by his in-

juries, jumped out of a window and was killed, it was held that his widow was entitled to compensation for his death.

Where a workman unreasonably refuses to submit to a safe and reasonable operation which will relieve or remove his incapacity to work at his trade, his incapacity thereafter is held to be the result of his refusal, and not of the original accident. In such case, however, the burden of proof is on the employer to show that the operation would have effected the result claimed, and that the refusal was unreasonable. The workman may justify by showing that he acted under the advice of an honest and competent physician. The same principle has been applied where the workman persistently neglects or refuses to conform to habits of life essential to his recovery.

Again, the employee's injury must "arise out of his employment." It must be due to the character of the work in which he is engaged, or to the conditions by which he is surrounded, or the dangers to which he is peculiarly exposed while performing it. In the language of the Supreme Court of Massachusetts: "The injury arises out of the employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury." "It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence."

Thus, while the employer would clearly be liable for injury caused by an accidental explosion in the quarry in which his employee was working, he would not be responsible if the employee was injured by a stray bullet fired from outside. So, it has been held that where a man engaged in working high up in the air upon the steel frame of a building was struck by lightning, the accident was attributable in part to the exposed character of the place where he was working, and therefore due to his employment, but that when a factory operative was so struck he was not entitled to compensation as the conditions under which he was working exposed him to no special danger. An employer has been held liable for injury caused by the explosion of a steam boiler operated by a third party on the floor below that on which his business was conducted, on the ground that his workmen

were necessarily exposed to this hazard while doing their work. So too, where the injury was caused by the bite of a cat habitually kept in the place of employment. And where the statute covers disease, the employer would be liable for the effects of an "occupational disease" such as lead or phosphorous poisoning, or a disease caused by bad drainage or other unhealthful conditions of the place where the employee was required to work, but not where the employee contracted an infectious disease, such as smallpox, from a fellow workman. Thus, where a boy is doing his work was required to use a leaky boat and contracted pneumonia as the result of wetting his feet, he was held to be entitled to compensation. On the other hand, when a teamster became temporarily deranged while on the road and after driving about aimlessly a long distance from his usual route was found dead from exposure, it was held that there was nothing in the nature of his employment that exposed him to danger of temporary derangement, and that the injury did not arise "out of his employment."

Injuries suffered by an employee at the hands of third persons while in the performance of his duty are generally considered as arising out of his employment. For instance, where a paymaster was robbed of his employer's funds and killed while engaged in his regular duties; where a game-keeper was attacked and injured by a poacher; and where an engineer was killed by a stone thrown by a boy from a bridge under which the train was passing. So, where a checker employed by a merchant was assaulted and killed by a drunken fellow-servant who was known by his employer to be quarrelsome and dangerous when intoxicated; and where a foreman whose duty it was to keep order was injured while attempting to stop a fight between workmen. On the other hand injuries resulting from practical jokes played by one workman on another, or from rough play, or from a private quarrel between workmen are generally held not to arise out of the employment. So too, where the assault has no relation to the fact of employment, as when it is committed by a drunken stranger.

The fact that the injury would not have been suffered had the workman been stronger or in better health is immaterial. "An accident arises out of the employment," said the Lord Chancellor of England, "when the required exertion producing the accident

is too great for the man undertaking the work, whatever the degree of exertion or the condition of health." Accordingly, it was held that the rupture of an aneurism while the workman was tightening a screw—a work not involving excessive strain—was an accident arising out of the employment; and so in a case of apoplexy brought on by over exertion.

Finally, the injury to the employee must have been sustained "in the course of his employment." The liability in this respect does not depend on whether the general relation of employer and employee subsists between the parties, but whether at the time of the accident the employee was actually in the performance of the employer's business, or under his control and subject to his direction; and it is held that an employee is deemed to be in the employer's service whenever he is present to perform his duties as a servant, and subject to orders, although at a given time he may not be in the actual performance of a duty. The law on this point is thus stated by an eminent judge: "An accident arises in the course of employment when the employee is doing what a man so employed may reasonably do, within a time during which he is employed, and at a place where he may reasonably be during that time."

Generally speaking, in a manufacturing or other similar business, the workman begins his employment upon entering the employer's premises and continues in it until he has left them. It has been held, however, that when the employee enters the premises by a forbidden route or one different from that provided by the employer, a resulting injury is not incurred in the course of his employment. Nor is the employer responsible when the employee temporarily leaves his work and for purposes of his own goes to a part of the establishment where he has no duty to perform and there meets with an accident; nor where, being employed to work on a certain machine, or to do a certain kind of work, he voluntarily and without orders undertakes the operation of a different machine or the performance of a different kind of work. But if the work is done with the assent of the employer, express or implied, or by the direction of his authorized agent, the fact that it is outside of the scope of his regular employment is immaterial. In the case of a sudden emergency the employee may, in the interests of his employer, do acts not within the scope

of his usual employment, as when a servant was injured while endeavoring to stop his master's runaway horse.

Where the accident does not take place on the employer's premises his liability depends upon the same general principles. Thus if the employer sends his coachman on an errand with his carriage and the coachman goes on a pleasure ride or on business of his own, the employer is not responsible, and so when he takes his employer's horse, or automobile without leave. But where a servant was injured while watering his employer's horse, which was one of his duties, it was held to be immaterial that he was intending after the watering to take the horse out for his own purposes.

Where a workman was employed in unloading a gondola car and after it was unloaded jumped on the car and rode to a switch where he had no duty, merely to pass the time, it was held that the employer was not liable for an injury which he sustained while so riding. On the other hand, where a factory employee deviated from his usual route in going from his home to his work in order to procure an article which his employer had directed him to procure it was held that this was in the course of his employment. And so where it is a part of the contract of service, express or implied, that the employee shall be carried to and from the place where the work is actually performed an accident happening on the way is in the course of employment.

The relation of employer and employee exists for a reasonable time before and after the actual performance of work provided the employee is upon the employer's premises. Thus, injuries sustained while coming to work or leaving it are within the scope of the employment.

So, where a workman after finishing his work for the day was injured while changing his clothes. And where a woman, after she had quit work at her machine, had her hair caught in machinery while combing it preparatory to going home at noon, it was held that the accident arose out of and in course of her employment. Where a workman is taking his lunch during the lunch hour upon the employer's premises at a place provided for that purpose, or at an apparently safe place which he has not been forbidden to use, he is still in the exercise of his employment. So, where a woman, after leaving her work room at the noon hour to go to lunch was injured by falling on stairs which

formed the only means of access to the room, although not in the control of the employer, it was held that her going out for that purpose was incident to her employment, and that she was entitled to compensation. And a workman is still acting in the course of his employment where after his work is finished he returns to his employer's premises for his pay.

THIRD—COMPENSATION FOR INJURIES.

In case of death a few of the States provide for the payment to the family of the deceased employee of a lump sum, the amount of three or four years' wages, but not less than a minimum amount varying from \$1,000 to \$2,000 and not more than a maximum amount of about \$4,000. In most cases, however, a system of weekly payments is adopted. Payments are usually made to the surviving wife or husband, and minor children under eighteen (or over eighteen if physically or mentally incapacitated), and if there are none then to other persons, if any, wholly dependent upon the deceased for support. Provision is also usually made proportionally for persons partially dependent. These payments are based on the average weekly wages of the deceased employee, and are made for only a limited time. They vary greatly in the different States both as to amounts and the times during which they are paid, as will be seen by reference to the abstracts of State laws at the end of this chapter. Where there are no dependents provision is usually made for the payment of funeral expenses to a limited amount. In one State only, Oklahoma, no payment is made in case of death.

In case of injuries not fatal, the laws of all the States provide for immediate surgical and hospital treatment at the expense of the employer; usually for a term varying from two weeks to sixty days. In some States there is a further limitation as to the amount of expense to be thus incurred. In California, under a recent law, there is no limitation, either as to time or expense.

Usually, in order to guard against malingering no direct payment is made for two weeks after the accident. After that time weekly payments are made for limited terms to the injured employee, or, in case of his death before full payment has been made, to his family, the amount of which is based on a certain percentage, varying from fifty to sixty-six and two-thirds, of his average weekly wages. These weekly benefit payments are usu-

ally granted for limited periods and are subject to the further limitation that they shall not be less than a minimum sum varying from four to six dollars per week, nor exceed a maximum sum of from ten to fifteen dollars. In case of blindness or of the loss of a limb or other bodily mutilation an additional payment is usually provided for, the amount of which is determined by certain schedules in which the amount payable for each kind of injury is specified. In California, Washington, and Oregon life pensions are given in case of permanent total disability. In many of the States it is provided that, where the employee injured is a minor, the fact that if he were uninjured his future earnings would be larger than those at the time of the accident, may be taken into account in determining the amount of compensation.

Unless the employer has actual knowledge of the accident, notice must be given to him as soon as practicable. In some States notice must be given within thirty days after the accident. In New York notice must be given to the employer and to the State Compensation Commission within ten days, or in case of death within thirty days. The notice should specify the names of employer and employee, the nature of the injury and the time and place of the occurrence of the accident, but errors in defects in the notice do not prejudice the rights of the employee unless the employer is misled thereby. The claim for compensation must also be presented within a limited time, usually within one year after the accident.

After the employee has given notice of his injury and from time to time during his disability he must if requested by the employer submit himself to examination by a physician or surgeon appointed by the employer, but he has a right to have a physician appointed and paid by himself present at such examinations. The Illinois statute provides that if the employee shall persist in unsanitary or injurious practices which tend either to imperil or retard recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to promote recovery his compensation may be reduced or suspended by the State Board, and a similar provision is found in the laws of several other States.

It is provided in the laws of many of the States that no agreement on the part of the employee to waive the benefits of the act

shall be valid, and also that rights to compensation shall not be assignable or subject to claims of creditors.

When the circumstances are such that the employee would have a claim for damages against a third party, the statute usually provides that payment by the employer will not bar an action by the employee against such third party. The Connecticut statute, for instance, provides that in such case the employee, or the employer if he has paid or is liable for compensation, may bring an action for damages against such third party. Employee or employer bringing the action shall notify the other, who may within thirty days join as a party plaintiff. If both join, any damages recovered are applied first to payment of the employer's claim, and the balance paid to the employee. The provisions in other states are to substantially the same effect.

FOURTH—PROCEDURE.

The Workmen's Compensation Law usually provides for the appointment of a State Board or Commission having jurisdiction over all claims for compensation under the Act. If the parties agree upon the amount and terms of compensation a memorandum of the agreement is filed with the Board which is thereafter enforceable in the same manner as a decree or judgment of a court. If the liability of the employer is disputed, or if the parties do not agree as to the compensation to be paid, a petition setting forth the nature and circumstances of the case is presented to the Board, upon which, after hearing the parties, the Board determines the questions at issue between them. In some States these questions are decided by a board of arbitration consisting of one member of the State Board and one person appointed by each of the parties, their decision being subject to revision by the State Board. In Louisiana, New Hampshire, and Rhode Island the amount of compensation is determined in the first instance by proceedings in court. These laws are always liberally construed; the proceedings before the Board are informal, and technical rules of evidence are disregarded.

The State Board retains a supervision over the matter of compensation and may on proper showing modify the original award if a change of circumstances requires it. It usually has power also to commute weekly payments into payment of a lump sum if that clearly appears to be for the interest of the party receiving

it, and to make such other changes in the form and manner of payment as it may deem to be for the best interest of the parties.

FIFTH—INSURANCE.

The increased liabilities imposed upon the employer by the Compensation Laws have made it more than ever important to him to be able to insure himself against these risks. It is no less important to the employee that his employer should be insured, and that the payment of compensation for injuries should not be dependent upon the solvency of the employer. Accordingly, in many of the compensation laws special provision is made for such insurance, either by the establishment of a State Fund or by the organization of an Employers' Insurance Association.

The policies of the several states both as to the form of insurance and as to making such insurance compulsory vary greatly. In some, as in New Hampshire, Nebraska, and Wisconsin insurance is optional. In California it is optional, although a State Fund is provided for. In most of the other States insurance in some form is compulsory. Thus, in Massachusetts the provisions of the Act apply only to subscribers to the "Employers' Insurance Association," which is under the supervision of the State, and to those who insure in private stock or mutual companies. In some States the law goes still farther; thus in Connecticut, New York, Illinois and some other States the employer must either satisfy the State Board of his financial responsibility and ability to pay any compensation awarded or he must insure in the State Fund or Employers' Association provided for in the Act or in some responsible private company. It is a very common provision that in case of accident the employee may make his claim for compensation directly upon the insurer.

There seems at present to be a growing tendency to provide for some system of State insurance, either by the establishment of a State Fund as in New York, Ohio, West Virginia, Michigan, California, Washington, and Nevada, or by the organization of Employers' Mutual Association under the supervision of the State as in Massachusetts and Connecticut.

ABSTRACTS OF WORKMEN'S COMPENSATION LAWS.

The three common law defenses referred to in these abstracts are: 1. Assumption by the employee of the risks of the employment. 2. Negligence of fellow-employee—the fellow-servant doctrine. 3. Contributory negligence on the part of the injured employee.

ALASKA.

Act relates only to employers of five or more persons, engaged in mining operations, including milling, reduction processes, etc. Acceptance of act is optional with both parties, but conclusively presumed unless notice is given of election to the contrary. Notice by employer must be witnessed by two witnesses, and recorded with U. S. Commissioner of the precinct. Notice by employee must be served on employer, and recorded with affidavit of date of service. Election operates for one year only; if not renewed, presumption of acceptance revives. Employer rejecting Act is deprived of the three common law defenses, except that of employee's negligence when wilful, or the result of intoxication. If employee rejects the Act all defenses are open to employer; but defense of assumed risk of business does not apply if injury is result of employer's violation of any statute providing for safety of employees.

Compensation: In case of death \$3,000 to widow and \$600 additional for each child under sixteen, not exceeding in all \$6,000. If employee also leaves dependent father or mother, or both \$600 in addition to amount payable to widow, not exceeding \$6,000 in all. If unmarried, to dependent father or mother \$1,200, or to both, \$1,200 each. If widower, leaving minor children, \$3,000 and \$600 additional for each child under sixteen, not exceeding in all, \$6,000. If unmarried, leaving no children, or father or mother dependent, funeral expenses not exceeding \$150, and other expenses incurred after injury, and before death, not exceeding \$150. For total permanent disability—if married, \$4,800, and \$600 additional for each child under sixteen, not exceeding in all \$6,000. If no wife or children but dependent father or mother \$4,200, or if both, \$4,800. If widower, or divorced, with minor children, \$3,600, and \$600 for each child under sixteen, not exceeding in all, \$6,000. If unmarried and no children or dependent father or mother, \$3,600. For partial disability, payments as fixed by schedule. For temporary disability, fifty per cent. of average daily wages during disability not exceeding six months. No compensation for first two weeks unless disability continues for eight weeks.

ARIZONA.

Compensation compulsory in certain dangerous occupations, for injury due to necessary risks of employment, or to failure of employer or his employees to use due care. Employments specified:—work on railroads; blasting; erection or demolition of steel frame buildings; use of hoisting apparatus on same; work on ladders or scaffolds more than twenty feet from the ground in erecting any structure; use of apparatus charged with electric current; pole lines for telegraph or telephone; mine and quarry work;

tunnels, sub-ways and viaducts; work in factories operated by steam or electricity.

Compensation: in case of death, twenty-four hundred times one-half of daily earnings, not to exceed \$4,000, to be applied to support of widow, if any, and support and education of minor children until eighteen; medical and funeral expenses also payable from fund. If no widow or children, then to dependent father and mother or sister. For injury not resulting in death within six months but producing total incapacity for work for more than two weeks—semi-monthly payment during incapacity of one-half of average semi-monthly earnings. In case of partial incapacity or of partial recovery, payment of one-half of difference between earnings before and earning capacity after the accident. Payment not to exceed in all \$4,000. Notice must be given to employer or foreman within two weeks, and duplicate sent to Attorney General. Disputed questions if not settled by agreement or arbitration, then by reference to Attorney General or by action at law. Both parties presumed to be bound by Act, but may disaffirm by giving notice. If either party refuses to make or accept compensation under the Act the other may resort to other legal remedies. Parties in occupations other than those above may elect to come under the Act.

CALIFORNIA.

Act is declared to be an expression of public power. It applies to all employers, including the State, counties, cities, etc.; and to all employees except those whose employment is only casual, and not in the usual course of employers business, and those engaged in agricultural labor, stock or poultry raising, and domestic service. In these excepted cases employer and employees may by joint action put themselves under operation of Act by written acceptance filed by employer with Commission, operative for one year, and from year to year thereafter unless terminated by sixty days' notice before the expiration of any year. Employer liable for injury or disease arising out of the employment and not caused by intoxication of employee or intentionally self inflicted.

Compensation: 1. Such medical, surgical and hospital treatment, including nursing, medicines and surgical supplies, artificial limbs, etc., as may reasonably be required to cure and relieve from effects of injury. No other compensation for first seven days. 2. In case of temporary disability: if total, 65% of average weekly earnings during such disability; if partial, 65% of weekly loss of wages; in any case not exceeding three times annual earnings, or for more than 240 weeks. In case permanent disability, 65% of average weekly wages for terms varying from one week in case of disability 1% of total, to 240 weeks for disability of 60% ; and for disability greater than 60%, the same as for 60%, with payment for life after expiration of 240 weeks, viz: for 70% disability 10% of weekly wages, for 80%, 20% of wages, for 90%, 30% of wages, and for 100%, 40% of wages, with proportionate amounts for intermediate percentages. In case of death, to persons wholly dependent, burial expenses not exceeding \$100, and death benefit which, added to funeral expenses and any disability payment accruing before death, equals three times annual earnings, such earnings to

be taken as not less than \$333.33, nor more than \$1,666.66. For partial dependents, in case there are no persons wholly dependent, burial expenses, and death benefit of three times annual amount devoted by deceased to such partial dependents, not exceeding, with burial expenses and any disability payments, amount payable to persons wholly dependent, as above. If no dependents, burial expenses, \$100. No compensation if death caused, or disability caused or aggravated, by refusal to submit to medical treatment or surgical treatment where risk is inconsiderable. Where injury is caused by serious and wilful misconduct of employee, if over sixteen, compensation reduced one-half, except in case of death or 70% disability, unless injury is caused by failure of employer to comply with law or safety order. Where injury is caused by serious and wilful misconduct of employer or his managing representative compensation increased one-half, but increase not to exceed \$2,500. Unless employer has knowledge of accident notice must be given within 30 days, but defect or absence of notice does not bar claim unless employer is prejudiced thereby. Proceedings for collection of disability benefit must be commenced within six months after date of injury; for death benefit within one year after death and within 240 weeks after injury. Industrial Accident Commission has jurisdiction over controversies under the Act, and may modify original award. Principal contractor liable to employees of subcontractor unless the latter carries insurance. Employer cannot contract for exemption from liability, and any settlement with injured employee must be approved by Commission. State Insurance Fund under management of Commission, who have power to fix rates of premiums to be paid by employers. Employer must secure payment of compensation by insurance in State Fund or in some authorized company, unless he proves to Commission his ability to carry his own insurance. Otherwise employee may sue as though Act did not apply, and employer deprived of three common law defenses. Insurer directly liable to employee and may assume employer's liability and relieve him. Employer cannot insure against liability for his own gross negligence or wilful misconduct.

COLORADO.

Act applies to state, counties, etc., and public institutions. Also to all employers of four or more persons regularly engaged in same business who elect to come under Act, excepting employers, of domestic servants and farm or ranch labor. Other employers may do so by filing acceptance with Industrial Commission. Acceptance conclusively presumed unless written notice to the contrary filed before commencing business. It may be withdrawn by written notice filed sixty days before expiration of any year. Employer must post notices in place of business stating whether or not he accepts Act. Employee is subject to Act if he has notice that employer is subject to it, unless he gives notice to contrary. Persons employed casually, or not in employer's usual business not included. Employer not accepting Act deprived of defenses of assumption of risks of business, negligence of fellow-servant, and negligence of employee. Employer accepting is subject only to liabilities in Act, and, as against employee not accepting, all legal defenses are open to him. Injury must be caused by accident arising out of

and in course of employment, not intentionally self-inflicted. Insurance Fund from premiums paid by employers. Employments divided into classes and premiums for each fixed by commission. Employer while in default in payment deprived of benefits of Act. Employer must secure compensation either by payment of premium to Fund, or by insuring in authorized insurance company, or by furnishing satisfactory proof to Commission of financial ability to pay compensation directly to employees. In either of two last cases notices to employees must be posted. Employer must furnish medical and hospital treatment, medicines, etc., for not exceeding 30 days or \$100 in amount. Compensation:—None except as above for first two weeks. Temporary disability, 50% average weekly wages so long as disability is total, not exceeding \$8, nor less than \$5, or full wages if less than \$5.00. Partial disability, 50% of impairment of earning capacity during continuance thereof, not exceeding \$8 per week, or \$2,080 in all. For certain specified mutilations time during which compensation is paid is fixed by schedule. Permanent total disability, 50% of average weekly wages for life; not exceeding \$8 per week, nor less than \$5, or full wages if less than \$5. For death within two years after injury:—If no dependents, burial expenses not exceeding \$75. To persons wholly dependent, 50% of average weekly wages, less any disability payments made before death, subject to maximum and minimum, for six years, but not more than \$2,500, nor less than \$1,000. To persons partly dependent the same for such portion of six years as Commission may determine, not exceeding \$2,500. In case of death from other causes, to persons wholly dependent, any unaccrued balance of compensation for permanent disability, and similar provision for persons partly dependent. On remarriage of spouse without children lump sum equal to one-half of unpaid balance of compensation; if dependent children such sum paid to them. Death benefits to dependents, non-residents of U. S., one third those to residents, and not to exceed \$1,000. Compensation reduced 50% when injury caused by failure to use safety device; or by wilful failure to obey reasonable rule for safety; or intoxication. Notice with claim for compensation, must be sent to Commission within 30 days. If no notice and no payment within one year, claim barred.

CONNECTICUT.

In actions for damages employer is deprived of defenses of contributory negligence, negligence of fellow employee and assumption of risk, but these provisions do not apply to employers of less than five employees, or of casual employees or outworkers, nor to employers accepting the obligations of the Act. Acceptance by employer and employee respectively presumed until notice to the contrary is filed. If employee rejects the Act employer not liable for compensation under it and has all common law defenses. No compensation for injury caused by wilful and serious misconduct or intoxication of employee. Employer of less than five employees may accept provisions of Act by written notice to employees and Compensation Commissioner and filing certificate of insurance company of insurance of his liability. Employee deemed to accept, but either party may withdraw by written notice to the other and to Commissioner. Employer having work in his

trade of business done on his premises by subcontractor liable to employees of latter. Employee having any physical defect which would impose on employer unusual hazard may, with approval of Commissioner, waive in writing compensation for any injury directly due to such defect. Injured employee must forthwith notify employer, who is bound to provide attendance of physician or surgeon and such medical or surgical aid or hospital service as latter may deem necessary. On failure to do so employee may provide same at employer's expense. No other compensation for first seven days, but if incapacity extends beyond four weeks compensation begins from date of injury. Compensation: 1. In case of death from injury within two years (a) \$100 burial expenses. (b) To persons wholly dependent, one half average weekly wages, not more than \$18 nor less than \$5 for 520 weeks. (c) If none wholly dependent, to those partly dependent, weekly compensation as above, but not more than amount contributed by deceased if more than \$5. In case of death of widow or widower compensation continued to her or his dependents; in case of re-marriage, to other dependents of deceased employee. Compensation to minors ceases at 18 unless incapacitated. To alien dependents not residents of U. S. or Canada half of above amounts. 2. In case of total incapacity to work, one half average weekly wages, not less than \$5 nor more than \$14 during incapacity, but not exceeding 520 weeks. Loss of both hands and certain other mutilations presumed to cause total incapacity. 3. For partial incapacity, one half difference between average weekly wages before injury and earning capacity afterward, not exceeding \$18 during partial incapacity, nor longer than 520 weeks. For certain specified mutilations, in addition to above compensation for total disability half average weekly wages, not more than \$18 nor less than \$5 for terms specified in schedule, in lieu of all other compensation. Written notice of claim for compensation must be made within one year. Written agreement between employer and injured employee as to amount of compensation made not earlier than seven days after injury may be approved by Commissioner and filed in office of Clerk of Superior Court. If no agreement, award made by Commissioner after hearing filed as above. Award or agreement subject to subsequent modification. Employer must either furnish Commissioner proof of solvency and ability to pay compensation, or furnish security, or insure his liability. In case of failure to do so injured employee or his representatives may elect within 30 days to bring action for damages, and employer deprived of common law defenses; directors of employing corporation or joint stock association jointly and severally liable for damages. Provision made for Employers' Mutual Insurance Associations of employers in same or similar business under State supervision, but employer may insure in other companies. Employer may agree with employees subject to approval of Commissioner on substitute system of compensation, offering equal benefits.

DELAWARE.

All employers and their employees presumed to accept provisions of Act unless notice given thirty days prior to injury or death. Employer not accepting must post notice in shop etc., or serve notice on employee personally, and immediately file affidavit of posting or service with Industrial Accident

Board; employee's notice by mail or personal service, and filing affidavit of mailing or service with the Board. Employer not accepting deprived of three common law defenses. Non-accepting employee of accepting employer subject to all legal defenses. Act does not apply to farm laborers, domestic servants, officers and servants of State, or any governmental agency, or their respective employers, nor to employment of less than five persons, nor to persons casually employed and not in regular course of employer's business, nor to out workers. "Injury" means "only violence to the physical structure of the body and such disease or infection as naturally results therefrom when reasonably treated"; it does not include any injury caused by the wilful act of another directed against him by reasons personal to employee and not as an employee, or because of employment; nor disease or infection except as above. Unless employer has knowledge of injury notice must be given within fourteen days, but may be given within thirty days unless employer prejudicial by delay, or within ninety days if reasonable cause for delay be shown. Unless there be knowledge or notice given within ninety days no compensation allowed. Agreement as to compensation must be made or appeal to Board taken within one year after accident, or of death. No compensation for injury resulting from intoxication, or deliberate and reckless indifference to danger, or wilful intention to bring about injury or death of employee or of another, or wilful failure to use safety appliance, or to perform duty required by statute. Compensation:—None for the first fourteen days, except medical and surgical attendance and hospital service not exceeding \$75, but if disability continues for four weeks compensation from date of injury. In case of death within one year, expenses of last sickness and burial, not exceeding \$100. For first 475 weeks of total disability 50% of wages, not less than \$5 nor more than \$15 per week, or full wages if less than \$5, not exceeding in aggregate \$4,000. For specified mutilations 50% of wages for periods specified in schedule. For other partial disability 50% of difference between wages before injury and afterwards, not exceeding \$15 per week or for more than 285 weeks. For death resulting from injury: To child or children if there be no widow or widower, 25% of wages, with 10% additional for each child in excess of two, with maximum of 60%. To widow or widower with no children 25% of wages; if with one child, 40%; with two children, 45%; with three children, 50%; with four children, 55%; with five children or more, 60%. If no widow, widower or children 20% to dependent father and mother or survivor of them. If none of foregoing, to dependent brother or sister 15% and 5% additional for each additional brother or sister, not exceeding maximum of 25%. Alien widows and children not residents of United States one half of amount for residents, and no alien widowers, parents, brothers or sisters, nonresident entitled to compensation. Employer must insure in some company approved by Industrial Accident Board or furnish Board with satisfactory proof of financial ability to pay compensation directly; in latter case security may be required. Employer not insuring deprived of three common law defenses, is subject to fine, and may be enjoined from doing business. Employers may form mutual insurance associations, and may enter into agreement with employees for substitute system of compensation, subject to approval of Board.

HAWAII.

Act applies to all industrial employments; but no compensation for injury caused by employee's wilful intention to injure himself or another, or by his intoxication. Compensation:—For death within six months, burial expenses, \$100, and payments to following persons, if dependent, viz: to widow or widower without children 40% of weekly wages; if with one or two children, 50%; if with three or more, 60%; if no widow or widower, then to child or children 30%, and 10% additional for each child in excess of two, with maximum of 50%; if none of foregoing, to father or mother, 40%, or if only partially dependent, 25%, if both dependent, above amounts to be divided equally; if no parents, same amount to grandparents; if no grandparent, to grandchild, brother or sister 25%, and 5% additional for each such additional dependent, with maximum of 40%. Payments only to dependents residing within U. S. Payments to widow until death or re-marriage not exceeding 312 weeks, to widower during disability or until re-marriage not exceeding 312 weeks; payments to child until 16, and for 104 weeks additional if incapable of self-support and unmarried; to other dependents above named during dependency, not exceeding 312 weeks. Wages to be considered as not more than \$36 per week, nor less than \$5. No compensation in excess of \$5,000. During disability employer to furnish surgical, medical and hospital services, etc., not exceeding \$150. For total disability—after first seven days—60% weekly wages, not more than \$18 nor less than \$3 per week, or full wages, if less than \$3 and \$3 if disability be permanent, but not for longer than 312 weeks, nor exceeding \$5,000; for partial disability 50% of difference between wages before accident and probable earnings afterwards, but not more than \$12 per week, or exceeding \$5,000 in all; for permanent partial disability due to specific mutilations, 50% of wages for terms stated in schedule in lieu of all other compensation; in case of serious facial or head disfigurement amount to be awarded by Commission, not exceeding \$5,000. Notice of injury must be given to employer as soon as practicable, and claim made within three months, or in case of death, within three months thereafter, but no limit to minor or person mentally incapacitated until after appointment of guardian or next friend. If parties agree as to amount of compensation, agreement to be filed with Industrial Accident Board; otherwise amount fixed by committee of arbitration. Agreement or award enforced by decree of circuit court. Employer must secure compensation by insurance in some authorized company, or by depositing with territorial treasurer security satisfactory to the Board, or by furnishing satisfactory proof of financial ability to pay claims directly; failure to do so subjects him to penalty and injunction against carrying-on business.

IDAHO.

Act mandatory, passed in exercise of police and sovereign power of State. Applies to all employees, including those of the State and municipalities, except those elected by popular vote or receiving salaries in excess of \$2,400; but not to agricultural pursuits, household domestic service, casual employment, employment by charitable organizations, or of outworkers, or of

members of employer's family dwelling in his house, unless employer and employees agree in writing filed with the Board. Such agreement if made may be terminated by either party on sixty days' notice. No compensation for injury caused by employee's wilful intention to injure himself or another, or by his intoxication. With approval of Board employer may agree with employees for substituted system of compensation conferring equal benefits. Compensation:—For death within two years, burial expenses \$100, and to following persons, if dependent, percentages of weekly wages, viz: to widow or widower without children 45%; if with child or children 55%; if no widow or widower, 25% for one child and 10% for each additional child, not exceeding 55%; to parents, if one wholly dependent 25%, if both 20% each, if partially dependent proportionate amount at discretion of Board; payments to parents not to exceed, in addition to amount payable to widow or widower and children, 55%; to brothers, sisters, grandparents, and grandchildren—if one wholly dependent, 20%, if more than one 30%; if none wholly dependent, 10% divided among partial dependents, but not exceeding, with payments to persons above having prior claims, 55%; if no dependents \$1,000 to be paid to Industrial Administration Fund. Payments to widow until death or remarriage; to widower during disability or until re-marriage; in neither case exceeding 400 weeks; to children until 18, and if incapable of self-support and unmarried for additional term not exceeding 400 weeks; to others above named during dependency, not exceeding 400 weeks. In case of alien dependents 50% of amount due under Act—and under certain conditions the whole—payable to Industrial Administration Fund. Death benefits subject to maximum of \$12 per week and minimum of \$6, or whole wages, if less than \$6. Employer to provide reasonable medical, surgical, or other attendance, medicines, etc., at time of injury, and for reasonable time thereafter, but employer and employee may waive these provisions and make agreement for hospital benefits under certain restrictions. For total disability, after first seven days, 55% weekly wages, not more than \$12, nor less than \$6, or full wages if less than \$6, for not exceeding 400 weeks, and thereafter \$6 per week during disability. For partial disability not exceeding 150 weeks, 55% of difference between weekly wages before accident and those employee will probably be able to earn afterwards. For certain mutilations 55% of wages for terms specified in schedule. Notice of injury must be given to employer as soon as practicable, and claim made within one year from date of injury or death. No limit to minors or persons mentally incompetent until appointment of guardian or next friend. Employers, except State and municipalities must insure compensation by insurance in State Insurance Fund, or by depositing with State Insurance Manager surety bond on guaranty contract with authorized company, and post notices in place of business that he has complied with law as to compensation; failure so to insure subjects him to penalty and injunction against carrying on business. Insurance Fund formed by premiums paid by employers based on classification of different kinds of business and relative hazards of each.

ILLINOIS.

Employer may elect to be bound by Act by filing notice with Industrial Board, and bound from year to year thereafter unless he files notice sixty days before expiration of year, and gives notice to employees. Employee bound unless he gives notice,—employer then entitled to common law and statutory defenses. In certain "extra hazardous" occupations employer presumed to have elected to pay compensation under the Act unless he files notice to the contrary, in which case he is deprived of common law defenses. Act does not apply to casual employees or those not in usual business of employer. Compensation.—1. In case of death, (a) to widow or dependent children four times average annual earnings, but not less than \$1,650 or more than \$3,500; said amounts being increased to \$1,750, and \$3,750, respectively in case of a widow with one child under 16, and to \$1,850 and \$4,000 in case of widow with two or more children, while children are under 16; (b) if no widow or dependent children same payment to totally dependent parent; (c) if none, to dependent parent, grandparent or grandchild such proportion of above sum as such dependency bears to total dependency; (d) if none of foregoing, to dependent collateral heirs such percentage of above sum as amount contributed by deceased during past two years bears to whole earnings. Any disability payments paid before death to be deducted from above benefits. (e) If no dependents, \$150 for burial expenses. 2. For injuries not fatal medical, surgical and hospital services and supplies not exceeding \$200 for 8 weeks. 3. For temporary total incapacity for work, more than six days, 50% earnings, not less than \$6 nor more than \$12 while total incapacity lasts, not exceeding amount of death benefit. (4) For serious and permanent disfigurement of hands, head or face, amount not exceeding one quarter of death benefit, provided employee is entitled to no other permanent disability compensation. 5. For loss of limbs and other parts of body, in addition to compensation for temporary total incapacity, 50% average wages for terms specified in schedule. For other partial incapacity 50% of difference between earning power before and after injury, subject to maximum and minimum as above. 6. For complete permanent disability 50% of earnings, not less than \$6, nor more than \$12, up to amount of death benefit, and thereafter pension for life equal to 8% of death benefit, but not less than \$10 per month. The 50% in all above cases increased 5% for each child under 16, up to 65%, and minimum and maximum increased to \$6.50 and \$13 for one child, to \$7 and \$14 for two children, and to \$7.50 and \$15 for three or more children. In case of death from injury before payments equal death benefit, difference payable to widow and children, but not less than \$500. In no case compensation to exceed 50% of average weekly wage or exceed \$12 per week, or in case of complete disability extend over 8 years. Industrial Board has jurisdiction over all controversies and decision may be filed and enforced by decree of Court. Employee cannot waive provisions of Act without approval of Board, and any settlement made within seven days after accident presumed to be fraudulent. Employer must within ten days after demand of Board either (1) file statement showing financial ability to pay compensation, (2) furnish bond or security, (3) obtain insurance, or (4) make other provision to se-

cure compensation;—otherwise employee may elect between compensation under Act and damages at law.

INDIANA.

Every employer and employee, except agricultural laborers and domestic servants, and others only casually employed, presumed to accept provisions of Act unless notice to contrary has been given thirty days before injury, or at time of employment if less than thirty days. Employers' notice must be posted in shop, etc., or given personally; employee's by registered letter, or given personally. Employers above excepted may come under Act by giving like notice. Employer electing not to operate under Act deprived of three common law defenses. Defenses open to employer accepting as against employee not accepting. Employer to furnish medical and surgical attendance and hospital services for thirty days after accident, and for additional thirty days if ordered by Industrial Board. No other compensation for first seven days. Compensation:—For death within 300 weeks,—burial expenses, not exceeding \$100; to persons wholly dependent 55% of average weekly wages for 300 weeks, or such part of 300 weeks as compensation has not been paid for disability; to persons partially dependent proportion of said amount that amount contributed by decease were to his whole earnings. Dependence of widow or widower and children living with such widow or widower terminates on re-marriage. For total disability 55% of average weekly wages during such disability, not exceeding 500 weeks. Partial disability, one half difference between average weekly wages before injury and actual wages afterwards, for not exceeding 300 weeks. For certain specified injuries 55% average weekly wages for periods specified in schedule. No compensation for injury due to self-inflicted injury, commission of felony, or misdemeanor, wilful misconduct, intoxication, wilful failure to use safety appliances, to obey reasonable posted rules, or to perform duty required by statute. Injured employee unjustifiably refusing employment suitable to his capacity not entitled to compensation during refusal. Employee must give notice of injury to employer within thirty days, unless excused by Industrial Board, and claim must be filed with Board within two years after injury or after death. Every employer must insure his liability in some authorized company, or satisfy Board of his ability to pay compensation directly. Provision is also made for Mutual Insurance Association under control of Board. Subject to approval of Board employer may agree with employees for substitution of different system of compensation.

IOWA.

Act compulsory on State and Counties and other public corporations, and acceptance presumed as against all other employers unless notice is given to employees and filed with Industrial Commission. Does not apply to domestic servants, farm laborers, or persons casually employed and not in employer's trade or business. Employer rejecting Act deprived of common law defenses except wilful negligence or intoxication of employee. If employee rejects the Act, above defenses open to employer, except that "assumed risk" will not apply when employer fails to furnish safety devices required by law. Employer cannot relieve himself by contract from obligation. No compensation payable until after notice, which should be given

within 15 days. If no notice given or knowledge of accident obtained by employer within 90 days no compensation allowed. Compensation:—1. For not exceeding four weeks, medical and hospital services and supplies to \$100, and to \$100 additional when ordered by Industrial Commissioner. 2. In case of death: (a) expenses of last sickness and burial \$100. (b) To persons wholly dependent, 60% average weekly wages, not less than \$6 nor more than \$15 per week for 300 weeks. (c) If none wholly dependent, then to partial dependents the proportion of above payment that amount contributed by deceased to such dependents bears to whole earnings. For disability, no compensation for first two weeks, except for mutilations specified in schedule hereinafter referred to, but in case of continued disability payments increased by two thirds for fifth to seventh week inclusive over regular rate hereinafter specified. 3. In case of temporary disability—After two weeks, 60% of average weekly wages not less than \$6 nor more than \$15, or the whole if wages less than \$6, during disability, not exceeding 300 weeks. 4. In case of permanent total disability—same as above, but for 400 weeks. 5. In case of permanent partial disability 60% of daily wages for periods varying from 7 to 200 weeks as per schedule. Payments to widow having no dependent children cease on re-marriage. Periodical payments may be commuted to lump sum by district court. "Personal injury" under the Act does not include disease, unless resulting from injury, nor injury caused by wilful act of third person directed against employee for reasons personal to latter or because of his employment. Payment of premiums for liability insurance by employee forbidden, but arrangements between employer and employee for additional benefits may be approved by Commission. Industrial Commission has jurisdiction over working of Act. —Decisions may be filed in District Court and enforced by judgment. Employer required to insure his liability in organization approved by Commission and provisions made for Mutual Insurance Associations of groups of employers. Employer failing to insure liable to injured employee as though he had rejected Act, and bound to post notice to that effect where work is carried on.

KANSAS.

Act applies only to trade or business on, in or about a railway, factory, mine or quarry, electric, building or engineering work, laundry, natural gas plant, county and municipal work, and processes requiring use of dangerous explosives or inflammable materials, all of which are declared to be especially dangerous, but not including agriculture, nor employers of less than five workmen continuously employed for a month, except in mines. Employers in other industries may elect to come under provisions of Act by filing notice with Secretary of State. Employers and their employees in such business presumed to accept Act unless they file notice with Secretary of State. Employer not accepting, not entitled to the three common law defenses. If he accepts and employee does not, these defenses are open to him unless accident was caused by him or his agents,—wilful or gross negligence. In this last event employee may elect between compensation under Act and damages at law. Employer not liable for injuries not disabling employee from earning full wages for one week, nor for injuries re-

sulting from deliberate intention, or from wilful failure to use safeguards furnished, or solely from deliberate breach of statutory regulations affecting safety, or from intoxication. Employer must pay cost of reasonably necessary medical, surgical and hospital treatment and supplies, not exceeding \$150, for not exceeding 50 days. Compensation:—1. In case of death. (a) To persons wholly dependent, three times earnings for preceding year, not less than \$1,400 nor more than \$3,800; and not exceeding \$750 if no dependents residing in U. S. or Canada. (b) If only partial dependents a proportional part of above. (c) If no dependents, expense of burial not exceeding \$150. 2. For total permanent disability, payment after first week during such disability of 60% of average weekly earnings, not less than \$6, nor more than \$15 per week, but not for more than eight years. 3. For temporary total disability, the same during such disability. 4. For permanent partial disability resulting from certain specified mutilations, a lump sum measured by 50% of average weekly earnings for periods set forth in schedule, but not less than \$6 nor more than \$12 per week. For injury not covered by schedule, during period of partial disability not exceeding eight years, 60% of difference between earnings before and after injury. Payments not assignable or attachable. Notice of accident within ten days, and claim for compensation within three months, or in case of death six months. Want of notice no bar unless employer is prejudiced thereby. Agreements or awards of arbitration filed in Court and enforced by judgment. If no agreement or arbitration, claim may be enforced by action in Court. Employer may with consent of Attorney-General contract with workmen for different scheme of compensation conferring equal benefits.

KENTUCKY.

Act applies to employers of six or more persons in any of twenty-two specified classes of industries, including mining, quarrying, logging, railroads and telegraphs, tunnel and sewer work, building, and substantially all kinds of manufacturing and similar occupations, but not to domestic or agricultural service, to persons casually employed, or to those employed wholly out of the State. Employers and employees in other industries may, on special application, also take advantage of Act. Industries specified may be reclassified and others added by Workmen's Compensation Board. Employer accepting Act not liable for injury caused by his own negligence or that of his agents or servants. Employee conclusively presumed to accept compensation under Act and waive rights of action at law if he continues to work after notice that employer has accepted the Act, but prior to receiving injury he may, by written notice to employer and copy sent to Board, waive benefits of Act and withdraw any previous acceptance. In such case all common-law defenses are open to employer. Employer not electing to come under Act, or in default in payment of premiums, liable for injuries caused by his neglect or default, or that of his agents or servants, and deprived of defenses of fellow servant, assumption of risk and contributory negligence. Compensation Fund formed by premiums fixed by Board for each class of industries. Amount of premiums based on gross amount of employer's annual pay-roll and paid in monthly instalments. Compensation:—1. Expense of medical attendance, nursing, hospital service

and medicines not exceeding \$100. 2. In case of death, funeral expenses not exceeding \$75. 3. For temporary total disability, 50% of average weekly wages, not exceeding \$12 per week, nor less than \$5, or full wage if less than \$5, but in no case for more than six years or to exceed in all \$3,750. 4. For partial disability, 50% of impairment of earning capacity during continuance thereof, not exceeding \$12 per week, or aggregate sum of \$3,750. 5. For certain specified mutilations, 50% of weekly wages, for various times as per schedule. 6. For permanent total disability, 50% of weekly wages until death, not exceeding \$12 per week, nor less than \$5 or full wages if less than \$5. 7. In case of death from injury within two years (a) if no dependents medical and funeral expenses as above. (b) To persons wholly dependent, 50% of average weekly wages for remainder of period until six years from date of injury, not exceeding in all \$3,750, nor less than \$1,500. (c) To persons partly dependent 50% of average weekly wages for such portion of six years as Board may determine, not exceeding in all \$3,750. No payment on account of self-inflicted injury or injury caused by wilful misconduct or intoxication. Only expense of medical attendance, etc., allowed for first week. Applications for compensation must be made within one year.

LOUISIANA.

Act obligatory on the State, cities, townships, etc., and incorporated public boards and commissions. Applies also to employers in certain "hazardous" occupations, and to any other occupations agreed by parties or determined by Court to be hazardous. Employers and employees in other occupations may by agreement in writing come under Act. Contractor liable to employee of subcontractor as though directly employed by him. Employer and employee bound by Act only if they so elect, but election presumed unless notice to the contrary be given 30 days before injury. Election may be terminated by either party by like written notice. In action by employee electing Act against employer not electing, employer deprived of defenses of assumption of risks incident to employment, negligence of fellow employee and contributory negligence; and injury presumed, *prima facie*, to be result of employer's negligence. In action by employee not electing Act against employer electing, all defenses open. Act applies only to "injuries by violence to the physical structure of the body, and such diseases or infections as naturally result therefrom." Any other form of disease or derangement is expressly excluded. No compensation for injury caused by employee's wilful intention to injure himself or another; by his intoxication; by deliberate failure to use guard or protection against accident provided for him; or by deliberate breach of statutory regulations affecting safety. Notice of injury must be given within 15 days or in case of death within thirty days. Claim within six months, and proceedings taken within one year. Employer must post notice in place of business that in case of accidental injury or death claim for compensation must be made within six months, or no payment made; otherwise time for giving notice of injury extended to twelve months. Agreement for settlement must be in writing, approved by Court and entered as its judgment. If no agreement, proceedings in Court. Compensation:—Employer must furnish reasonable medical,

surgical and hospital services and medicines, not exceeding \$150. No other compensation for first week, nor in any case until employer is notified, but if disability continues six weeks compensation for first week shall be paid. For temporary total disability, 55% of wages during disability, not beyond 300 weeks. Permanent total disability 55% of wages, during disability, not beyond 400 weeks. Partial disability 55% of difference between wages at time of injury, and those employee is able to earn afterwards. For certain specified mutilations, 55% of wages during times specified in schedule. For death within one year, burial expenses not exceeding \$100, and payments for 300 weeks, as follows: To widow or widower without children, 25% of wages; with one child, 40%; with two or more children, 55%. To one child, without living parent, 25%; two children, 40%; three or more children, 55%. If no widow, widower or child, to dependent father or mother, 25% of wages, or to both, 55%. If none of foregoing, to dependent brother or sister or other member of family, 25% for one, and 10% for each additional one up to 55%. Where individual allowances would bring percentage above 55, proportionate abatements to that amount. Payments to any beneficiary cease on death, or on re-marriage of widow or widower, or on widower becoming capable of self-support, or on minor reaching age of 18.

MAINE.

Act applies to State, counties, etc., towns which vote to accept its provisions, and employers of more than five workmen in same business who elect to become subject to its provisions. Employees in domestic service, agriculture, or logging, and those employed casually, or not in employer's regular business, not included. Employers not assenting deprived of three common-law defenses. Employer must file with Industrial Accident Commission written assent, together with copy of industrial accident insurance policy in a Casualty Insurance Company authorized to do business in the State, and stamped with approval of Insurance Commissioner; or satisfy Commission of his solvency and financial ability, and deposit cash, securities or bond. Or, employer may, with approval of Commission, continue any system of compensation used by him Jan. 1, 1915, provided its benefits equal those under the Act and no contributions are required from employees unless for additional benefits. Notice of employer's acceptance must be posted in factory, etc. Employee deemed to assent unless at time of hiring he gives notice in writing, and files copy with Commission within ten days, or within ten days after notice of employer's acceptance, the same to continue in force for one year, and from year to year, unless within 60 days of expiration of any year written claim of common-law rights of action is filed with Commission, and notice given to employer within ten days thereafter. Compensation: None for injury occasioned by wilful intention of employee to injure himself or another, or by intoxication unless employer knows of habit of intoxication. For first two weeks, medical and hospital service and medicines, not exceeding \$30, unless in case of major surgical operation. For death—To persons wholly dependent, one-half average weekly wages, not more than \$10, nor less than \$4, for 300 weeks; and proportionate amounts if only partial dependents. If no dependents, expenses of last sickness and

burial not exceeding \$200. For total incapacity, one-half average weekly wages, not more than \$10, nor less than \$4, for not exceeding 500 weeks, nor \$3,000. For partial incapacity, one-half of difference between wages before and after injury, not more than \$10, nor for more than 300 weeks. For certain mutilations amounts as for total disability for periods specified in schedule, and afterwards during continuance of partial incapacity—not more than 300 weeks in all. . Written notice stating nature, time, place, and cause of injury and name and address of person injured must be given to employer within 30 days, and claim made within one year after injury, or after death or removal of physical or mental disability. Agreement of parties as to compensation filed with and approved by Commission, or decision of Chairman of Commission, filed with Clerk of Courts of the county has effect of judgment. Within two years order for compensation may be modified on proof of change in employee's condition. Unless agreement or petition is filed within two years claim is barred.

MARYLAND.

Act obligatory on employers in certain "extra-hazardous" employments, of which 42 classes are specified, including railroad, telephone, telegraph, electric power and light, sewer and sub-way work, lumbering, quarrying, ship-building, and substantially all kinds of mill and factory work; but employers and employees in employments not "extra-hazardous" may jointly file acceptance and come under Act. Act does not apply to farm laborers, domestic servants, country blacksmiths, wheel-wrights, or similar rural employments, nor to casual employees, those employed wholly out of the State, or whose salaries exceed \$2,000. Covers only accidental injuries, and such diseases and infections as unavoidably result therefrom, but not those occasioned by wilful intention of employee to injure himself or another, or by his intoxication. If employer fails to secure compensation for employee, latter may claim compensation under Act or maintain action for damages, but in latter case employer deprived of three common-law defenses. In case of injury by deliberate intention of employer, employee has same election. Payments made from State Accident Fund formed from premiums paid by employers, and administered by State Industrial Commission. Industries classified, and premiums fixed by Commission according to risk in each class. Employer may secure compensation by insuring in State Accident Fund, or in some authorized insurance company, or by furnishing to satisfaction of Commission proof of financial ability to pay compensation directly to employees; in latter case Commission may require deposit of securities. Employer must notify Commission which form he elects, and obtain approval. Compensation: In all cases, medical attendance, medicines, etc., not exceeding \$150. For permanent total disability, 50% average weekly wages during continuance of total disability, exclusive of first week, not more than \$12, nor less than \$5, or full wages if less than \$5, not exceeding \$5,000. For temporary total disability, 50% average weekly wages during continuance, subject to above maximum and minimum, for not more than 6 years, or more than \$3,750. For permanent partial disability, in case of certain mutilations, 50% average weekly wages, not exceeding \$12 nor

more than \$3,000 in all, for periods specified in schedule: in other cases 60% of difference between wages before and after accident, not exceeding \$12, during partial disability but not exceeding in all \$3,000. For temporary partial disability 50% of difference between wages before injury and afterwards, during partial disability, not exceeding \$3,000. For death within two years: funeral expenses not exceeding \$75, but if no dependents only if employee does not leave enough to pay same; to persons wholly dependent, 50% average weekly wages for 8 years, not more than \$4,250, nor less than \$1,000; to those partly dependent 50% wages for such part of 8 years as Commission may determine, not exceeding \$3,000. No compensation but medical attendance, etc., for first two weeks. Notice must be given to employer within 10 days, or in case of death within 30 days. Application for compensation with certificate of attending physician, if any, must be filed with Commission within 30 days. In case of death, claimant must also file proof of relationship.

MASSACHUSETTS.

Act provides for Employers' Insurance Association consisting of not less than 100 members employing not less than 10,000 employees, and subject to State supervision. It applies only to employers who become subscribers to such Association, or who insure their liability in some insurance or casualty company. Other employers deprived of the three common law defenses. Act does not apply to domestic servants or farm laborers, or those casually employed or whose employment is not in usual business of employer. Employee held to waive right of action at common law unless he gives notice, and cannot recover for injuries occasioned by his serious and wilful misconduct. If injured by serious and wilful misconduct of employer or superintendent may recover double compensation. Compensation, to be paid by Insurance Association or other insurer:—1. In case of death, (a) to persons wholly dependent, 66⅔% of average weekly wages, not less than \$5 nor more than \$10 for 500 weeks, but not more than \$4,000. (b) If only partial dependents, the proportion of above payment that amount contributed by deceased to such dependents bears to his whole earnings. In all cases expenses of burial not exceeding \$100 to be charged as part of compensation to dependents, if any. 2. In case of total incapacity for work, weekly compensation equal to 66⅔% of average weekly wages, not less than \$7 nor more than \$16 for not more than 500 weeks, or more than \$4,000. 3. During partial incapacity weekly compensation equal to 66⅔% of difference between average weekly wages before and after injury, but not more than \$16 per week, or more than \$4,000, and in addition thereto in case of loss of limbs and certain other specified mutilations certain weekly payments for limited times. During first two weeks after injury or time of incapacity, and in unusual cases for a longer period, necessary medical and hospital services and medicines. No other compensation for first ten days. Notice of injury as soon as practicable, unless employer or Association has knowledge thereof. Claim within six months or in case of death or incapacity within six months after death or removal of incapacity. Failure to make claim within that time not a bar if occasioned by mistake or other reasonable cause. No agreement by employee to

waive right to compensation valid, and payments not assignable or subject to attachment. State Board of Labor and Industries has jurisdiction over settlement of claims. Arbitration provided for subject to revision by full Board. Amounts of weekly payments subject to subsequent modification, and after 6 months payment, may in special cases be commuted to lump sum. Decisions of Board may be filed in Superior Court and decree entered thereon.

MICHIGAN.

Act applies to the State, counties, etc., and to employers who file acceptance with Industrial Board. All other employers deprived of the three common law defenses except as against employees electing not to be subject to Act. Act does not apply to domestic servants or farm laborers or to persons casually employed and not in course of employer's usual business. Compensation:—1. During first three weeks medical and hospital services and medicines. 2. In case of death, (a) To persons wholly dependent, weekly payments equal to half of average weekly wages, not less than \$4 nor more than \$10 for 300 weeks. (b) To persons partly dependent same proportion of the above that the amount contributed by the deceased bore to his whole earnings. (c) If no dependents, expenses of last sickness and burial, not exceeding \$200. 3. In case of total incapacity weekly compensation equal to one-half of average weekly wages, not less than \$4 nor more than \$10 for 500 weeks, not exceeding \$4,000. 4. In case of partial incapacity, weekly compensation equal to one-half of difference between average weekly wages before and after injury, not more than \$10 per week for 300 weeks. For loss of a limb and other specific mutilations half of average weekly wages for terms varying from 7 to 200 weeks, subject to maximum and minimum limitations as above. In case of death before expiration of term for weekly payments, dependents receive difference between full death benefit and amounts already paid for disability. Payments begin on 15th day after injury, but if disability continues for 8 weeks then from date of injury. Unless employer has actual knowledge of injury notice must be given within three months. Claim must be made within six months, or within six months after death or removal of incapacity. No agreement by employee to waive rights valid. Payments not assignable or liable for debts. Agreements for settlement subject to approval of Accident Board. Disputed claims referred to arbitration subject to appeal to the Board. Decisions of the Board may be filed in Circuit Court and judgment entered thereon. Employer may by furnishing proofs of solvency to Board agree to make payment directly to employees, or may insure his liability in an Employer's Liability Company or Insurance Association. Provision is made for Accident Fund in nature of mutual insurance by five or more employers of 3,000 employees under supervision of Commissioner of Insurance.

MINNESOTA.

Employer not electing provisions of Act deprived of three common law defenses except as to wilful negligence of employee. Act does not apply to domestic servants, farm laborers or persons casually employed and not in usual business of employer. Employer and employee presumed to accept

Act unless notice is given. No liability for injuries self-inflicted or caused by intoxication. Compensation:—1. Medical, surgical and hospital services for 90 days, not exceeding \$100, or, on application to Court, \$200. 2. In case of death, to widow 40% of monthly wages, and for one minor child 10%, for two or three children 20% and for four or more 26⅔% in addition. On re-marriage, widow without children one-half of compensation unpaid; if children, her share goes to them. For dependent orphan 45% of monthly wages, and 10% additional for each additional orphan—not exceeding 66⅔%. For dependent husband and no child 30% of monthly wages. If no widow, children or husband, to one dependent parent 35% of monthly wages, or to two such 45%. If none, to dependent brother, sister, grandparent, mother-in-law or father-in-law, 30%; if more than one dependent relation 35%.—Partial dependents in proportion to proportionate amount of earnings contributed by deceased. Compensation to dependents subject to maximum of \$15 per week, and minimum of \$6.50, or full wages if less than \$6.50, during dependency, not exceeding 300 weeks. In all cases of death from injury expenses of last sickness and burial not exceeding \$100. 3. For temporary total disability 66⅔% of wages, subject to maximum of \$15 and minimum of \$6.50, or full wages if less than \$6.50, during disability, not exceeding 300 weeks. 4. For temporary partial disability 66⅔% of difference between wages before accident and those employee is able to earn afterwards, during such disability, not exceeding 300 weeks. 5. For permanent partial disability from certain mutilations 66⅔% of wages for times specified in schedule; in other cases 66⅔% of difference between wages before accident and those employee is able to earn afterwards, subject to maximum of \$15 per week, for 300 weeks. 6. For permanent total disability 66⅔% of wages, subject to maximum of \$15 and minimum of \$6.50, or full wages if less than \$6.50, for not exceeding 550 weeks, but in all such cases drawing more than \$6.50 per week payments after first 400 weeks reduced to \$6.50 per week for remainder of term,—the total compensation not to exceed \$5,000. In case of death after disability, disability payments already made deducted from death benefit. In case of temporary disability no compensation, except medical treatment, etc., allowed for first week, nor in any case unless employer has actual knowledge of injury or is notified in writing within 14 days. No compensation recoverable until such knowledge or notice. Notice may be given later unless employer is prejudiced by delay. If no knowledge or notice within 90 days, claim for compensation barred. Action or proceeding by employee to recover compensation must be brought within one year after employer has made report of accident to Commissioner of Labor. Employer may insure his liability, and employee may then make claim directly upon insurer.

MISSOURI.

Every employer and employee, including municipal and other organizations, presumed to accept provisions of Act unless, prior to accident written notice be filed with Workmen's Compensation Commission. Employer rejecting Act must post notices on his premises, and employee rejecting must give written notice to employer. Employer rejecting Act deprived of three

common law defenses, but they are allowed to employer accepting, as against employee rejecting. Act does not apply to farm labor, or domestic servants, including family chauffeurs, or to persons casually employed, or to out-workers, or to employer of less than five employees, unless both employer and employees elect to be bound, nor to employees whose average annual earnings exceed \$3,000. "Injury" defined as "violence to physical structure of the body and such disease and infection as naturally results therefrom, but not including occupational disease, or contagious disease contracted during employment. Persons having their usual business done under contract on their premises liable as employers. Compensation: Medical, surgical and hospital treatment, nursing and medicines for first eight weeks after injury, not exceeding \$200. No compensation when death or disability due to unreasonable refusal to submit to treatment. No other compensation for first seven days unless disability lasts six weeks. For temporary total disability 66⅔% of employee's average earnings for not more than 400 weeks, not less than \$6, nor more than \$15 per week, or full wages if less than \$6. For temporary partial disability 66⅔% of difference between average earnings before accident and those employee is capable of earning afterwards, not exceeding \$12 per week. For permanent partial disability, in addition to all other compensation 66⅔% of average earnings, not less than \$6 nor more than \$15, for periods specified in schedule. For permanent disfigurement of face and head, not exceeding \$750. Special provisions as to hernia. For permanent total disability, 66⅔% of average earnings for 240 weeks, and afterwards 40% for life, not less than \$6, nor more than \$15 per week. In case of death, burial expenses, not exceeding \$100 and expenses of last sickness not exceeding \$200; to total dependents two-thirds average annual earnings for preceding year, not less than \$6, nor more than \$15 per week for 300 weeks; if no total dependents, to partial dependents part of foregoing death benefit in proportion to contribution to partial dependents made by deceased in his lifetime. Employer must insure his liability in some authorized insurance carrier unless he satisfies Commission of his ability to carry liability directly. Insurer primarily liable to employee. Employer must notify Commission of accidents within ten days. Claim must be filed with Commission within six months.

MONTANA.

Act applies to "all inherently hazardous works and occupations within the State"; those specifically mentioned including, besides railroads, telegraphs, etc., nearly every kind of mechanical or manufacturing industry. Domestic servants, farm laborers and persons casually employed are not included. Employer not electing to come under Act deprived of three common law defenses. Employer assenting must elect by which one of three compensation plans he will be bound, and notify Industrial Accident Board. Election made presumed to continue from year to year unless notice of withdrawal is filed with Board not less than thirty or more than sixty days before expiration of fiscal year, which begins July 1st. Employee bound by employer's election, unless written notice be given to employer and filed with Board. Under plan No. 1, employer, on satisfying Board of his finan-

cial ability, may settle directly with employee, but Board may require security. Under plan No. 1 he may procure and file with Board policies of insurance for such amount as Board may from time to time direct. Under plan No. 3 each employer pays annually to the Industrial Accident Board a certain percentage of his annual pay-roll, the percentage in each industry being fixed in accordance with a classification of industries, of which 26 are specified in the Act. Where public corporation or contractor for such corporate is employer plan No. 3 obligatory on employer and employees. Employers and employees in non-hazardous industries may by joint election accept provision of plan No. 3. Term "injury," as used in Act, defined as one "resulting from some fortuitous event, as distinguished from the contraction of disease. Compensation:—During first two weeks, only medical and hospital services and medicines, not exceeding \$50. In case of death, percentages of wages varying from 30% to 50% to different classes of beneficiaries and dependents, not less than \$6 nor more than \$12.50 per week, or full wages if less than \$6, for not exceeding 400 weeks. In case of death within six months burial expenses not exceeding \$75 in addition. For temporary total disability, 50% of wages, subject to above maximum and minimum for not exceeding 300 weeks. For permanent total disability same compensation for not exceeding 400 weeks, and thereafter during disability \$5 per week. For partial disability one-half difference between wages before and after injury, not exceeding one-half the maximum compensation for total disability, or 75% of compensation for total loss of member causing partial disability, for not exceeding 150 weeks in case of permanent partial disability and 50 weeks in case of temporary partial disability. For certain specified injuries 50% of wages, subject to same maximum and minimum, for periods specified in schedule. Payments to non-residents of U. S. not exceeding 50% of those to residents. Notice of accident not resulting in death must be served on employer or insurer within 60 days, unless latter has actual knowledge. All claims must be presented within six months after accident. There is a special act providing for State accident insurance of coal miners by assessments paid by mine owners.

NEBRASKA.

Act applies to the State and other governmental agencies, and to all employers of persons in regular trade, business or profession. It does not apply to employers of domestic servants or farm laborers, or of persons casually employed, or not in regular business of employer, nor to persons working on employer's materials at their own homes or on premises not under employer's control. Other employers may by agreement with employees accept provisions of Act. Both employer and employee presumed to accept provisions of Act unless notice is given to the contrary. Employer not accepting must post notice in place of business, and file duplicate with Compensation Commissioner. Employer not accepting deprived of three common law defenses, but may avail himself of defense of wilful negligence or intoxication of employee. Liability only for violence to physical structure of the body and disease or infection resulting therefrom; not for occupational disease, or contagious or infectious disease contracted

during employment, or death from natural causes. Employer liable for reasonable medical and hospital attendance and medicines, not exceeding \$200. In case of dismemberment or major surgical operation employee may designate surgeon. No other compensation for first week unless disability continues six weeks, then from date of injury. Compensation: For total disability, for first 300 weeks 66⅔% of wages, not more than \$15 nor less than \$6 per week, or full amount of wages if less than \$6; after 300 weeks for remainder of life 45% of wages, but not more than \$12 nor less than \$4.50 per week or full wages if less than \$4.50. For partial disability 66⅔% of difference between wages at time of injury and earning power afterward, but not more than \$15 per week, nor for more than 300 weeks. For permanent injury from certain mutilations 66⅔% of wages for periods specified in schedule, but not more than \$15 per week nor less than \$6, or full amount of wages if less than \$6.—For death from injury,—to persons wholly dependent, 66⅔% of wages, not more than \$15, nor less than \$6 or full amount of wages if less than \$6, for not exceeding 350 weeks. If no one wholly dependent then to persons partially dependent the proportion of above benefit that amount contributed by deceased bore to his whole wages. In either case burial expenses \$150, without deduction. Compensation to alien dependents, widows, children and parents, non-residents of U. S., the same, but within one year may be commuted into lump sum of two-thirds of future instalments. No compensation to alien widowers, brothers and sisters, not residents of U. S. In case of death resulting from injury, before expiration of period for disability payments, dependents entitled to death benefit as if death had been immediate, deducting disability compensation already paid. No agreement by employee to waive rights valid. Unless employer has notice or knowledge of injury notice must be given as soon as practicable. Claim for compensation must be made within six months after accident, or death, or after removal of physical or mental incapacity. Claim barred unless within one year after accident, or after death, parties have agreed upon compensation payable, or one of them has filed petition to determine same. Employer may insure his liability, and employee may then make claim directly on insurer.

NEVADA.

Act applies to all employers and their employees, except those engaged in agricultural labor, stock or poultry raising, or household domestic service; but employers and employees in excepted classes may come under Act by filing acceptance with Industrial Commission. Parties bound by Act cannot waive its provisions. Injured employee entitled to receive as accident benefits medical, surgical and hospital treatment, nursing, and medical and surgical supplies, including artificial limbs, needed within ninety days after accident, or one year if ordered by Commission. Employer may collect from employees one-half cost of accident benefits, not exceeding \$1 per month from each. Compensation:—In case of death, burial expenses not exceeding \$125. To widow with no child 30% wages of deceased until death or remarriage, and on remarriage two years' compensation in one sum. To widower with no child 30% average wage, if wholly dependent, until death or remarriage. To widow or widower with child or children 10% additional for each

child until eighteen, and in case of parent's subsequent death each child's share increased to 15%; total amount not to exceed 66% of wages. To each surviving child or children under 18, if no widow or dependent widower, 15% of wage, not to exceed in all 66%. If no such widow, widower or child, to parent wholly dependent, 25% monthly wage during dependency, or to both parents 35%; to brothers or sisters under 18, if one is wholly dependent, 20% monthly wage for support of such brother or sister until 18; if more than one dependent brother or sister 30% to be divided among them; if none wholly dependent, but one or more partly dependent 10% among them. In other cases of total or partial dependence question to be determined by facts, but payments to partial dependents not to exceed 100 months. Basis of computation of wages not to exceed \$120 per month. In case of death of any specified dependent before expiration of term for compensation, burial expenses not exceeding \$125. For temporary total disability, if no one in U. S. totally dependent on workman, 60% average monthly wage, not more than \$72 nor less than \$30 per month during disability, not exceeding 100 months, or \$7,200; if any total dependents \$10 per month additional for each. For permanent total disability 60% average monthly wage, not less than \$30, nor more than \$60 for life. For partial disability 60% of difference between wages earned before, and earning power after accident, not more than \$40 per month, for not exceeding 60 months. Basis of computation not to exceed \$120 per month. For certain specified injuries, disability deemed permanent, and compensation 50% average monthly wage, not less than \$30 nor more than \$60 in addition to compensation for temporary total disability for periods specified in schedule. For permanent disfigurement of head or face, including injury to or loss of teeth, Commission may allow reasonable compensation for not exceeding 12 months. Compensation begins at end of one week, but if disability lasts two weeks is reckoned from date of injury. Claim must be made within one year. State Insurance Fund formed by assessment of premiums upon all employers according to schedule in Act, and all claims paid from this Fund.

NEW HAMPSHIRE.

Act applies only to workmen engaged in manual or mechanical labor in certain dangerous employments, viz: steam or electric railroads; mills, factories, etc., where machinery is operated by steam or other mechanical power and where five or more persons are employed; electric wires or apparatus; use of gunpowder or other explosive or steam boiler, provided injury is occasioned by explosion; quarries, mines and foundries. No compensation for injury not disabling workman for more than two weeks, or caused by his intoxication, violation of law, or serious or wilful misconduct. Employer who files with Commissioner of Labor acceptance of Act and satisfies him of ability to comply with its provisions, or gives security, is not deprived of common law defenses, except in case of wilful failure to comply with statutory or legal requirements. Employer may revoke acceptance by filing declaration with Commissioner of Labor and posting notices in factory, etc. Injured employee may elect between action for damages or compensation under Act, but resort to one excludes the other. Com-

pensation:—1. In case of death; (a) To persons wholly dependent, 150 times average weekly earnings; (b) To persons partially dependent, such portion of above death benefit as amount contributed to such dependents by deceased bears to his whole earnings. (c) If no dependents, expenses of medical attendance and burial, not exceeding \$100. 2. In case of total or partial incapacity for work, weekly payment, commencing two weeks after injury, during such incapacity, not exceeding one-half of average weekly earnings, measured by difference between wages before injury and earning ability afterwards, and not exceeding \$10 per week for 300 weeks. No compensation until notice is given. Notice must be given as soon as practicable, before workman has voluntarily left employer's service and during disability, and claim within six months after accident or death, or after removal of physical or mental incapacity to give notice, but want of notice no bar to claim unless employer prejudiced thereby. Disputed claims referred by petition in equity to superior court. Provision is made for Employers Mutual Liability Association.

NEW JERSEY.

All employers and their employees presumed to accept provisions of the Act unless notice is given to the contrary. May withdraw on 60 days notice. No compensation where injury is intentionally self-inflicted or caused by intoxication of employee. Employers not accepting provisions of Act deprived of three common law defenses. Compensation:—1. During first twenty-seven days medical and hospital services and medicines not exceeding \$50, but in severe cases Commissioner may on petition order additional services, artificial limbs, etc., to \$200 and extend time to 17 weeks. 2. In case of death, (a) Expenses of last sickness not exceeding \$200, and cost of burial not exceeding \$100. (b) For one actual dependent 35% of wages, and 5% for each additional one up to five; for six or more 60%; to be distributed according to order of Workmen's Compensation Bureau. Payments to children only while under 18, and to other dependents except husband, wife and step-parents, only to those under 18 or over 40 unless physically or mentally incapacitated. Death benefits not less than \$6 nor more than \$12 per week, for 300 weeks, but full wages if less than \$6. Compensation not payable to alien dependents not residents of U. S. 3. For total permanent disability 66⅔% of wages, not less than \$6 nor more than \$12, or full wages if less than \$6, during disability, not exceeding 400 weeks. For partial permanent disability compensation based on extent of disability subject to maximum and minimum as above; for certain bodily mutilations 66⅔% of wages for from 5 to 200 weeks as per schedule. 5. For temporary disability 66⅔% of wages, subject to maximum and minimum as above, for not more than 300 weeks. Special provision as to hernia. Total number of weekly payments not to exceed 400 in any case. Unless employer has actual knowledge of accident or notice within 14 days, no compensation due till notice given or knowledge obtained. If notice or knowledge within 30 days, failure to give earlier notice no bar except to extent that employer is prejudiced thereby. If no notice given or knowledge obtained within 90 days no compensation allowed. Question of liability and compensation determined by

petition to Workmen's Compensation Bureau. Claim barred unless within one year parties have agreed on compensation or petition filed. Award may be reviewed after one year if incapacity of injured employee has increased or diminished. Periodical payments may by special leave of court be commuted into lump sum and employer may at any time after award pay whole amount of future instalments to savings bank, etc., in trust for employee and be relieved of further liability. No agreement to waive rights to compensation under Act is valid. Employer must satisfy Commissioner of Banking and Insurance of permanence and financial standing of his business, or insure liability in some authorized company; penalty for failure to do so. He must also post notices in place of business stating method of securing compensation.

NEW MEXICO.

Act applies only to employers of four or more workmen, engaged in certain "extra-hazardous" occupations. Employers and workmen in other occupations may become subject to Act by written agreement filed in office of clerk of district court. Workmen injured while working on scaffold, etc., ten feet above the ground included, without regard to number employed. Both parties presumed to accept provisions of Act unless notice to contrary is given before accident. Employers rejecting Act deprived of three common law defenses, but these defenses open to employer accepting, as against employee rejecting. Employer must file in office of clerk of district court policy of insurance or guarantee company, or bond, or other security for payment of compensation, with post-office address of each party thereto, or must satisfy judge that he is financially solvent; failure to do so punishable by fine. Compensation: For first two weeks, surgical, medical and hospital services and medicines, not exceeding \$50; and thereafter as follows: For total disability 50% of earnings not exceeding \$12 per week nor less than \$6, or full amount of wages if less than \$6, for not exceeding 520 weeks. If death from injury results within a year: (1) If there be no dependents funeral expenses not exceeding \$75, and any amounts paid for disability. (2) If there are dependents, funeral expenses \$75, and percentages of average weekly earnings for 300 weeks from date of injury as follows: To child or children, if no widow or widower, 25% earnings, with 10% additional for each child in excess of two, and maximum of 60%; to widow or widower, if no children, 40%, not exceeding \$12 per week; to widow or widower with one child, 45%, with 5% for each additional child, not exceeding 60%; if no widow, widower or children, to father or mother, or both, dependent to any extent, 20%; if none of foregoing, to brother or sister dependent to any extent 15% and 5% for each additional brother or sister, with maximum of 25%; to partial dependents not exceeding amounts contributed by deceased. Earnings in death compensation not taken to exceed \$30 per week, nor less than \$12, unless actual earnings less than \$12. For disability partial but permanent—for certain mutilations 50% earnings for times specified in schedule, subject to maximum and minimum as above. For permanent disfigurement of face or head \$500 additional may be allowed. For hernia, if workman elects operation \$50 allowed for operating fee. Compensation may be reduced or suspended if workmen persists in unsanitary

or injurious practices or refuses to submit to treatment essential to promote recovery. Unless employer or agent having charge of work has actual knowledge of injury, written notice must be given within two weeks, or at most within sixty days, and claim made within sixty days or in case of death, within one year. No compensation to relatives or dependents not residents of U. S. at time of injury. Employers may form mutual insurance companies to insure liability.

NEW YORK.

Act applies only to 45 groups of "hazardous occupations," including nearly all industries in the State, and all other employments in which four or more persons are regularly employed in same business or establishment either on or away from plant of employer, excepting farm laborers and domestic servants, and occupation, not conducted for pecuniary gain. Employees of State, counties, etc., not included. No compensation for accident due to wilful intention of employee to injure himself or another, or to intoxication. Compensation provided in Act exclusive remedy, except that if employer fails to secure payments by insurance or otherwise, employee may elect between compensation and damages at law, and in latter case employer deprived of three common law defenses. Compensation:—1. Medical, nursing and hospital services, medicines, etc., for 60 days or longer, if Commission so requires; no other compensation for two weeks. 2. In case of death, (a) Funeral expenses \$100. (b) To surviving wife or dependent husband 30% of average weekly wages during widowhood or dependent widowhood, and 10% additional for each child while under 18, not exceeding in all 66⅔%. On re-marriage two years' compensation. (c) If no surviving wife or dependent husband 15% for each child while under 18, not exceeding 66⅔%. If whole 66⅔% is not absorbed by above payments, balance to grandchildren, brothers and sisters, 15% each while under 18, and parents and grandparents 15% each during dependency. Limit of wages for computing death benefit \$100 per month. 3. For total permanent disability, 66⅔% of average weekly wages, during disability. 4. For total temporary disability 66⅔% during continuance of same not exceeding \$3,500. 5. For partial permanent disability 66⅔% of average weekly loss of wages, and for certain specified mutilations same percentage for periods of from 15 to 312 weeks. 6. For partial temporary disability 66⅔% of average weekly loss of wages during continuance of same, not exceeding \$3,500. In case of death any unpaid balance of disability compensation not exceeding \$250 payable to surviving wife, husband, children or other dependents. Notice of injury must be given to State Workmen's Compensation Commission and to employer within 10 days, or in case of death within 30 days thereafter. Failure to give notice bars claim unless excused. Claim barred unless made within one year after accident or death. Decision of Commission on question of fact final. No agreement of employee to pay part of liability premium or to waive right to compensation valid. Employer must secure compensation to employees by insuring in State fund, or in approved stock or mutual company, and filing copy of policy with Commission, or by furnishing satisfactory proof of ability to

pay compensation, and must post notice of fact about place of business. Employer insuring in State fund relieved of all liability. State insurance fund formed from premiums assessed on basis of pay-roll upon employers at rates fixed for different groups by Commission. Provision also for Employers' Mutual Liability Companies of 40 or more employers, having 2,500 employees.

OHIO.

Act obligatory upon the State, counties, etc., and on all other employers of five or more workmen in same business or establishment, but not including persons employed casually and not in usual course of employer's business. Every employer required to contribute to State Insurance Fund annual premiums, in proportion to amount of wages paid by him, at rate fixed by State Liability Board of Awards for business in which he is engaged; except that employers who agree to abide by rules of Board, and are of sufficient financial ability to make compensation certain, may maintain benefit funds or departments, either alone or jointly with other employers, and pay directly to injured employees, in which case benefits must be equal to those in Act. No other form of insurance permitted. Employer complying with foregoing provisions not liable to action for damages, provided notice be given to employees, except that for wilful injury by employer or agent, employee may elect between compensation under Act, and action for damages, but in latter case defenses of contributory negligence and negligence of fellow employee will be open to employer. Employer not complying not entitled to benefits of Act, and deprived of three common law defenses. Compensation:—1. In case of death within two years: (a) To persons wholly dependent, 66⅔% of average weekly wages for remainder of period between date of death and eight years after date of injury, not less than \$2,000 nor more than \$5,000. (b) To persons partly dependent, same benefit for such portion of such eight years as Board may determine not exceeding \$5,000. 2. In case of permanent total disability 66⅔% of average weekly wages for life, not less than \$5 nor more than \$12 per week, but whole wages if less than \$5. 3. For partial disability 66⅔% of impairment of earning capacity during continuance thereof, not exceeding \$12 per week or \$3,750. For certain specified mutilations, 66⅔% of weekly wages for from 10 to 200 weeks, subject to maximum limitation as above. 4. For temporary disability 66⅔% of weekly wages while disability is total, not less than \$5 nor more than \$12 per week, but whole wage if less than \$5, for not more than 6 years or \$3,750. In addition to above, medical, nursing and hospital services and medicines not exceeding \$200, except in special cases, and in case of death, funeral expenses not exceeding \$150.—No other compensation for first week. No agreement by employee to waive rights under Act or to pay part of premium valid. All questions of liability and manner of payment determined by Board, who have power to modify awards if subsequent conditions so require.

OKLAHOMA.

Act applies only to employers of more than two workmen, engaged in manual or mechanical work in certain "hazardous employments." Does

not include agricultural, horticultural or retail mercantile pursuits, dairy or stock raising, and provides only for "accidental injuries arising out of and in course of employment, and such disease or infection as may naturally or unavoidably result therefrom." Contractor liable to employees of subcontractor. Liability under Act exclusive, but if employer has failed to secure compensation employee may sue for damages, and employer deprived of three common law defenses. No liability where injury is caused by wilful intention of employee to injure himself or another, or failure to use guard against accident, or directly from intoxication. Employer must secure compensation either, 1. by insurance in stock or mutual company; 2. by scheme of compensation entered into by agreement with employees and subject to approval of Commission; or 3. by furnishing proof to Industrial Commission of financial ability to pay, in which latter case security may be required. He must post notices in places of business that he has complied with rules of Commission and secured payment of compensation. Compensation:—Medical, surgical and hospital services, medicines, etc., for sixty days, and such further time as Commission may determine, not exceeding \$100 unless approved by Commission. No other compensation during first seven days unless disability continues for twenty-one days, then from date of accident. No compensation in case of death. For permanent total disability 50% average weekly wages during continuance thereof, not exceeding 500 weeks. For temporary total disability, the same, not exceeding 300 weeks. For permanent partial disability 50% weekly wages for periods specified in schedule of injuries. In other cases of partial disability, permanent or temporary, 50% of difference between average weekly wages before injury, and working capacity afterwards, for not exceeding 300 weeks. All above payments subject to maximum of \$18 per week, and minimum of \$8, or full wages if less than \$8.—Notice must be given to employer and Commission within 30 days after injury, and claim must be made within one year. Claim not assignable and exempt from execution. No agreement of employee to pay premium or waive right to compensation valid.

OREGON.

Act applies to all employers in certain "hazardous" occupations unless notice is given annually to the contrary. Others may by giving notice accept its provisions. Employers not under Act deprived of three common law defenses. Employer under Act may set up these defenses against employee rejecting it. Occupations classified and employer required to pay monthly to Industrial Accident Commission for Industrial Accident Fund, percentage of monthly payroll specified for his class; also to collect from each employee and remit with his own payment one cent per day for each day employed. Provision for diminishing rate of contribution by employer when payment for injuries to his workmen are less than half of contributions. Compensation:—First aid, transportation, hospital, surgical and medical service, etc., not to exceed \$250 without approval of Commission. 1. In case of death. (a) Expense of burial \$100. (b) To widow or invalid widower monthly payment of \$30 for life or until re-marriage, and \$8 for each child under 16, but total amount not to exceed \$50. On re-marriage

widow receives \$300. (c) If no wife or husband, monthly payment of \$15 to each child under 16, but total not to exceed \$50. Child under 16 and over 15 entitled to payments for one year. (d) If only other dependents, monthly payment to each equal to half of average monthly support received by each from deceased during preceding 12 months, not exceeding for all dependents \$30 per month. Payments to other dependents cease at 16, daughter at 18. (e) If workman under 21 and unmarried, \$25 per month to parents until he would have been 21, and thereafter payments as above to dependents. If widow or widower die leaving children under 16, share of latter increased to \$15 per month until 16, not exceeding \$50. 2. In case of permanent disability: (a) If unmarried, \$30 per month. (b) If worker have wife or invalid husband, \$35; if husband not invalid \$30. (c) If worker have wife or husband and child under 16, or being widow or widower have child under 16, monthly payment of \$8 additional for each child until 16, not exceeding \$50 in all. (d) If worker die during total disability, \$30 per month to widow or widower until death or re-marriage, and \$8 per month for each child until 16; to child left orphan \$15 per month until 16—not exceeding \$50 per month. Special provisions for hernia. 3. For total temporary disability, payments as above while total disability continues, increased one-half for first six months, but monthly payment in no case to exceed 60% of monthly wage. If disability becomes partial only and temporary, for not exceeding two years, proportion of total liability payment which former earning power bears to that after injury. 4. For permanent partial disability \$25 per month for periods varying from 4 to 96 months as per schedule of injuries, with provisions in certain cases for commutation to lump sum. Claim in non-fatal cases must be filed within three months after injury, and in fatal cases within one year. For insanitary or injurious practices retarding recovery, or refusal to submit to necessary medical or surgical treatment, compensation may be suspended or reduced. Individual employer or member of employing firm or corporation may, on written application to Commission become entitled to compensation as a workman on basis of wages and contribution to be fixed by Commission.

PENNSYLVANIA.

Both employer and employees conclusively presumed to have accepted provisions of Act unless notice to contrary with proof of service is filed with Bureau of Accident Compensation within ten days after service and before accident. Either party may withdraw by giving the other sixty days' notice, to be filed as above. Act does not apply to persons casually employed, or not in regular course of employer's business, or outworkers, but includes laborers hired by employee or subcontractor in performance of employer's regular business. "Injury" construed to mean "only violence to physical structure of the body and such disease as naturally results therefrom." Employer must insure payment of compensation by insuring in State Workmen's Insurance Fund, or in some authorized company, or satisfy Bureau of his financial ability. If employer fails to comply with provisions of Act, injured employee may by written notice within 30 days after accident, elect between compensation under Act and action for damages; in latter

case employer deprived of three common law defenses. Compensation:—For first fourteen days, only surgical, medical and hospital services, medicines, etc., not exceeding \$25 or, in case of major surgical operation, \$75. In case of death, to children, if there be no widow or dependent widower, 25% of wages and 10% additional for each child in excess of two, not exceeding 60% in all; to widow or widower without children 40%; to widow or widower with one child 45%, with 5% for each additional child, not exceeding 60%; if no widow, widower or children, to dependent father and mother, or the survivor, 20%; if none of foregoing, to dependent brothers and sisters, 15% for one, and 5% for each additional one, not exceeding 25%. Children, brothers and sisters only while under 16. In all cases expenses of last sickness and burial, not exceeding \$100. Wages not taken to exceed \$20 per week, or less than \$10. Compensation for 300 weeks, and for child beyond that time until 16 at rate of 15% for one, and 10% for each additional one not exceeding 50% in all. For total disability, for first 500 weeks after 14th-day, 50% of wages, not less than \$5 nor more than \$10, or full wages if less than \$5, not exceeding \$4,000. For partial disability—for certain specified injuries, 50% of wages for periods specified in schedule, subject to maximum and minimum; in other cases 50% of difference between wages before and after injury, not more than \$10 per week for 300 weeks. Compensation to alien widows and children not residents of U. S. two-thirds of amounts to residents. None to other non-resident aliens. Unless employer have actual knowledge of accident or notice given within 14 days, no compensation due until such knowledge or notice. All claims barred in one year unless amount of compensation is agreed upon or petition filed.

PORTO RICO.

Act applies to all laborers, except farm laborers not working on power-driven machinery or on work where animal power is used, domestic servants, and clerical workers in offices and commercial establishments where machinery is not used. Does not apply to employer regularly employing less than three laborers, nor to any laborer whose wages exceed \$1,200 per annum. Compensation paid from Workmen's Relief Trust Fund, formed by premiums assessed upon employers by Commission, based on amount of payroll. Occupations classified, and rate of premium fixed for each class. Every employer must, prior to July 15, of each year file with Workmen's Relief Commission statement showing number of employees, and total amount of wages, and keep register showing name, age, and sex of each laborer, nature of work and wages paid to each. Within five days after any accident, he must report to Commission name of employee injured and date and nature of injury. Failure to file statement or report punishable by fine. Employer failing to file reports or pay premium deprived of three common law defenses and defense of negligence of contractor not insured under the Act. Employee may waive provisions of Act and recover damages for injuries caused by illegal act or gross negligence of employer. Compensation:—Medical attendance, medicines and sustenance as may be prescribed, including necessary hospital service; any money advanced for food or medicine after allowance of compensation to be deducted from

compensation awarded. For temporary disability one half of wages until cured, but not exceeding 104 weeks, and not less than \$3 per week, nor more than \$7. For partial disability for permanent work, not less than \$1,300, nor more than \$2,500, graded in proportion to rate of wages. For permanent total disability, not less than \$2,000 nor more than \$4,000, graded as above. For death within one year, to dependent widow or widower and legitimate children and grandchildren (and in proper cases to illegitimate), and in default thereof to dependent parents, and if none to nearest dependent relative, \$3,000 to \$4,000 as maximum, graded according to earning capacity of deceased and number of persons entitled to compensation. In exceptional cases of extremely dangerous occupation, rate of insurance may be raised to maximum of ten per cent. Applications for compensation must be made within 90 days after accident or death. If not made within 90 days Commission must investigate reason, and if not made because of ignorance or other reason not under control of party concerned, 30 days additional allowed. No application denied on account of limitation unless it is clearly shown that party was notified of his rights. No compensation for workman injured while wilfully intending to commit crime, or to injure another, or voluntarily bring injury upon himself, or where intoxication was the cause, or injury was caused by criminal act of third person, or was solely due to workman's negligence. Rights under Act not assignable or subject to attachment.

RHODE ISLAND.

Employer not electing to come under Act deprived of three common law defenses. Act does not apply to employers of five or less workmen in same business unless they elect to come in, nor to employees in domestic service or agriculture. Employer to file acceptance with Commissioner of Industrial Statistics, and post notices to employees. Acceptance operates for one year, and from year to year thereafter unless notice of withdrawal is given within 60 days of the expiration of a year. Employee is assumed to accept unless he gives notice. No compensation for injury resulting from wilful intention or intoxication. No compensation for first two weeks, but if incapacity extends beyond four weeks compensation begins from date of injury. Employer must furnish reasonable medical and hospital services and medicines, but employee may select physician or hospital, which must within seven days notify employer and present claim for services within three months after conclusion thereof. Compensation:—1. In case of death, (a) To dependents one-half of average weekly wages, not less than \$4 nor more than \$10 for 300 weeks. If dependent be widow, on her death compensation payable to children under 18, or over 18 if incapacitated. (b) To persons partially dependent, proportion of benefits as above equal to proportion of annual earnings of deceased paid to such dependents. (c) If no dependents, expenses of last sickness and burial not exceeding \$200. 2. In case of total disability, one-half of average weekly wages, not less than \$4 nor more than \$10 per week for 500 weeks. 3. Partial disability, difference between average weekly earnings before and after injury, not more than \$10 per week for 300 weeks. In addition to other compensation specific

payments for limited times for certain specified mutilations. Notice of injury must be given within 30 days and claim made within one year after injury, or after death. Want of notice no bar if employer had notice of accident. No agreement of employee to waive rights under Act valid, and claims not assignable or liable for debt. Payments after six months may be commuted to lump sum on application to court. Agreement of parties as to compensation may be filed in Court and enforced by process. If no agreement, proceedings by petition to Superior Court. Alternative schemes for compensation by agreement between employer and employees permitted, subject to approval of Court, provided benefits be equal to those under Act. Employer must secure compensation either, 1. by insurance in authorized company; 2. by furnishing proof to Commission of financial ability to pay directly to employee; 3. by furnishing security; 4. by combination of last two plans. In case of failure to do so, injured employee may elect between provisions of Act and action for damages, election to be given in writing to employer within 30 days. The provisions of the Act, except as to compulsory insurance, have been extended to State and municipal employees.

SOUTH DAKOTA.

Act applies to State and municipal corporations as well as private employers, and is presumed to be accepted by every employer and employee unless notice in writing is given to the contrary. Does not apply to casual laborers or one not employed in usual course of employer's business, to agricultural laborers or domestic servants. Employer electing not to operate under Act deprived of three common law defenses, but these defenses open to employer electing as against employee not electing. No compensation for injury or death due to employee's wilful misconduct, including intentional self-inflicted injury, intoxication, wilful failure to use safety appliance, or to perform duty required by statute. "Injury" construed to mean accidental injury, not including disease except as resulting from injury. Compensation:—For death, if employee leaves widow or children whom he was under obligation to support, sum equal to four times annual earnings, not less than \$1,650 or more than \$3,000. If no sum so payable, then same amount to dependent parent, grandparent, brothers or sisters. If nothing payable as above, then to dependent collateral heirs such percentage of above sum as amount contributed by deceased during preceding two years bore to whole earnings. If nothing payable under above provisions, burial expenses not exceeding \$150. Payment to personal representative of deceased or to beneficiaries, and distributed in proportion to degree of dependence on earnings of deceased. For injury not resulting in death.—(a) Necessary first aid, and medical, surgical and hospital service for four weeks, not exceeding \$100. (b) No compensation for disability less than two weeks, but if it continues for eight weeks compensation computed from date of injury. (c) Special compensation for services and permanent disfigurement of hand, head or face, not accompanied by disability. (d) For certain specific mutilations, 50% of average weekly wage for times specified in schedule; in other cases of partial disability one-half of difference between earning capacity before and after injury. For permanent complete

disability fifty per cent. of earnings not less than \$6 nor more than \$12 per week, from date of injury until amount equals death benefit. In case of death before payments completed, unpaid balance payable to persons entitled to death benefits as above, not exceeding \$500. In no case payments exceed 50% of weekly wages, or \$12 per week, nor except in case of complete disability, extend beyond six years. Unless employer have actual knowledge of injury or death, or employee prevented by physical or mental incapacity, written notice must be given at once; if not given within thirty days, and no reasonable excuse no compensation payable. Claim for compensation barred unless made within one year after injury or death. Employer must insure liability in some authorized company or give security, or satisfy Commissioner of financial ability to pay compensation directly.

TEXAS.

Employers not subscribers to Texas Employers' Insurance Association, or otherwise insuring liability, deprived of three common law defenses, unless injury is caused by wilful intention of employee or by his intoxication; but plaintiff must prove negligence of employer or his agent. Act does not apply to employers of less than three employees, nor to domestic servants, farm laborers or railway employees. Employee of subscriber held to have waived right of action under common law or statute, unless he gives notice, and then subject to all defenses. "Injury sustained in course of employment" means "damage or harm to the physical structure of the body and such diseases or infection as naturally result therefrom." Does not include injury caused by act of God, unless employee exposed to greater hazard than the general public, nor by act of third person not directed against employee because of employment, nor received while in state of intoxication, nor caused by employee's wilful intention and attempt to injure himself or some other person, but includes all other injuries received in employer's business, whether on employer's premises or not. Exemplary damages in addition to compensation may be recovered in action at law against employer when death is caused by his wilful act or gross negligence. No compensation for first week, but Association must furnish reasonable medical and hospital services and medicines for two weeks, and for such further time as attending physician, from week to week, certifies that same is necessary. Compensation:—1. In case of death, weekly payment equal to 60% of average weekly wages, not less than \$5 nor more than \$15 per week for 360 weeks, for the benefit of surviving wife or husband and minor children, without regard to dependency, dependent parents, grandparents, stepmother and children, or brothers or sisters, to be distributed according to the law of descent and distribution of the State, but not subject to debts of deceased, or of beneficiary. If no beneficiaries, expenses of last sickness and funeral benefit of \$100. 2. In case of total incapacity, 60% of average weekly wages, not less than \$5 nor more than \$15 for 401 weeks. 3. While incapacity is partial, 60% of difference between average wages before injury and earning power afterwards, not exceeding \$15 per week for 300 weeks, nor for total and partial incapacity more than 401 weeks. For certain specified mutilations 60% of average weekly wages not less than \$5,

nor more than \$15 per week for periods stated in schedule. In any case in which operation will affect a cure or improve condition Association or employee may demand such operation, and in such operation being found by Industrial Accident Board to be advisable, employee bound to submit to operation and Association to provide and pay expense of same, including hospital treatment, etc. If employee refuse, compensation suspended. Special provision in regard to hernia. No agreement of employee to waive rights under Act valid. Periodical payments may be commuted to payments of lump sum with approval of Board, which has jurisdiction over all matters relating to operation of Act. Texas Employers' Insurance Association authorized with not less than 50 subscribers, employers of not less than 2,000 employees, under supervision of State. On giving notice of membership to employees, employers not liable to suits for damages; compensation paid by Association. Insurance also permitted by other Companies, subject to provisions of Act, and policy-holder has same rights as subscriber to Association.

UTAH.

Act applies to State, county, city, town and school districts, and to all private employers of three or more workmen in same business. Does not apply to agricultural laborers and domestic servants or persons casually employed, or not in employer's usual business. Those employing less than three may come under terms of Act. "Personal injury" does not include disease except as resulting from injury. State Insurance Fund formed by premiums paid by employers insuring in said fund. Private employer must secure compensation by insuring in State insurance fund, or in authorized stock or mutual company, or by furnishing Commission satisfactory proof of financial ability to pay directly. In latter cases he must post notices of fact in his place of business. Employer securing compensation not liable to action for injuries not resulting in death. Employer not securing compensation liable to action for damages by injured employee, and deprived of three common law defenses. In case of injury caused by wilful misconduct of employer, employee may elect between action for damages and compensation under Act. For injuries resulting in death right of action remains, but all defenses open to employer; but representatives of employee may waive right of action and accept benefits of Act. Compensation:—Medical, nursing and hospital services and medicines not exceeding \$500 and in case of death funeral expenses not exceeding \$150. No other compensation during first three days. For temporary disability 60% average weekly wages while disability is total, not exceeding \$16 per week, nor less than \$7, but in no case for more than six years or exceeding \$5,000.—For partial disability, during such disability, and for not exceeding six years, 60% of difference between wages before injury and those employee is able to earn afterwards, not exceeding \$16 per week. For loss of certain parts of the body 60% of weekly wages not more than \$16,—for periods stated in schedule, all subject to above maximum and not to exceed a total of \$5,000, and for other disfigurement or loss, same percentage of wages, for not exceeding 200 weeks. For permanent total disability, 60% weekly wages for five years from date of injury, and thereafter 45% until death, not exceed-

ing \$16 per week nor less than \$7. In case of death within three years,—if no dependents, burial expenses, and \$750 to State insurance fund unless employer is insured in said fund. If there are wholly dependent persons, 60% weekly wages, not exceeding \$16 per week for remainder of period between date of death and six years after date of injury, not more than \$5,000, nor less than \$2,000. If there are partly dependent persons, 60% wages, not exceeding \$16 per week, for such portion of said six years as Commission may determine, not exceeding \$5,000. Benefits in case of death to be paid to one or more dependents for benefit of all dependents, as Commission may determine. Should dependent die or marry, right to compensation ceases. No agreement by employee to waive compensation or pay any part of premium valid.

VERMONT.

Act is elective, but election presumed unless prior to accident written notice is given to the contrary. Election may be terminated by 60 days' notice in writing. As against employee electing to come under Act, employer not electing deprived of defenses of assumption of risk, negligence of fellow employee and of employee himself. In suit by employee not electing Act against employer electing, all defenses are open to employer. Act applies to all State and municipal bodies and employees, other than officials elected by popular vote, or whose remuneration exceeds \$2,000 per annum, and all industrial employments, other than domestic service, in which over ten persons are regularly employed, but others may come under Act by giving written notice to the Board. Persons employed casually or not in employer's trade or business excluded. "Personal injury by accident," etc., includes injury caused by wilful act of third person against employee because of employment, but does not include disease unless resulting from injury. No compensation for injury caused by employee's wilful intention to injure himself or another, or by his intoxication, or failure to use safety apparatus. Compensation:—In case of death within two years: burial expenses not exceeding \$100; to dependent widow or widower with no dependent children, 33⅓% weekly wages, until re-marriage or death of widow, or during disability or on re-marriage of widower, not exceeding 260 weeks; to widow or widower and one or two dependent children, 40% or if three or more children, 45%; if no widow or widower, to dependent child or children, 25% and 10% for each child in excess of two, not exceeding 40% in all, until 18, but not exceeding 260 weeks; if none of foregoing but parents, if wholly dependent 25%, if partially dependent 15%; if no dependent parent, but grandparent, same percentage; if none, but dependent grandchild, brother or sister, 15% for one and 5% for each additional one, with maximum of 25%; in all latter cases during dependency, not exceeding 208 weeks; weekly wages taken as not over \$25, nor less than \$5, and total compensation for death not to exceed \$3,500. In case of disability—first two weeks surgical, medical and hospital services and supplies not exceeding \$100. Total disability—after one week 50% average weekly wages, not more than \$12.50 nor less than \$3 during disability or full wages if less than \$3, for not exceeding 260 weeks. And not to exceed \$4,000. Partial disability, 50% of difference between weekly wages before injury and probable amount

afterwards, not exceeding \$10, during disability, not exceeding 260 weeks. For certain mutilations 50% average weekly wages, for times specified in schedule. Notice of injury must be given to employer as soon as practicable, and claim made within six months, or within six months after death. Act is administered by Industrial Accident Board. Employer must secure payment of compensation by insurance in approved insurance or guarantee company or by depositing bond or other security with Board, or by satisfying Board of his financial responsibility, and must post notice in place of business that he has complied with this provision. Employer failing to secure compensation may be enjoined from doing business until provision is complied with. Agreement by employee to pay any part of cost of insurance void.

VIRGINIA.

Act applies to State and municipal corporations, and to persons and corporations having regularly in service eleven or more operatives in same business in the State. Does not apply to steam railroad employees, who are provided for by special Act, nor to casual employees, or those not in usual course of employer's business, nor to farm laborers or domestic servants. Other employers may voluntarily elect to be bound by Act. Term "injury" as used in Act means "only injury by accident arising out of and in course of employment," and does not include disease unless resulting naturally and unavoidably from accident. Special provisions in regard to hernia. Every employer and employee presumed to accept provisions of Act unless notices given thirty days before accident or death, or at time of employment if that be less than said thirty days. Employer's notice must be posted in shop, or served personally; employee's notice by personal service or registered mail. Either party may withdraw by giving similar notice. Employer electing not to operate under Act deprived of three common law defenses. Employer electing may defend on these grounds against employee not electing. If neither elects, rights same as though employer only rejected. No compensation for injury or death due to employee's wilful misconduct, including intentional self-inflicted injury, or attempt to injure another, or intoxication, or failure to use safety appliance, or wilful breach of regulations approved by Industrial Commission. Claims for compensation have same priority as unpaid wages of labor, are not assignable and are exempt from attachment. Notice of injury given to employer as soon as practicable; no compensation prior to notice unless employer has knowledge of accident, except in case of physical or mental incapacity or death. No compensation if notice is not given within 30 days, unless reasonable excuse is given and employer not prejudiced. Claim must be filed with Commission within one year after accident or death. For thirty days after accident employer to furnish necessary medical attention, and may continue to furnish attending physician during continuance of disability, and necessary hospital services and supplies. No other compensation for first fourteen days. For total incapacity to work, weekly compensation equal to one half weekly wage, not less than \$5 nor more than \$10, not exceeding \$4,000 in all, during such incapacity, not exceeding 500 weeks. For partial incapacity, weekly compensation equal to one half dif-

ference between average weekly wage before injury and earning power afterwards, not exceeding \$10 per week for not exceeding 300 weeks. For certain specified mutilations, 50% of average weekly wages for terms specified, subject to above maximum and minimum, and if employee dies from other causes, unpaid balance to dependent next of kin. For death within six years, compensation to dependents, weekly payments equal to one half weekly wages, not less than \$5 nor more than \$10 for 300 weeks from date of injury, and \$100 burial expenses. If only partial dependents, same proportion of half wages that amount contributed by deceased bore to whole earnings. If no dependents, citizens and residents in U. S. or Canada, compensation not to exceed \$1,000. Compensation to widow or widower ceases on re-marriage, but continues to children until 18 and to other dependents. If no dependents, burial expenses not exceeding \$100. Total compensation in no case over \$4,000. Employer must insure in some authorized company or association, or furnish Industrial Commission proof of financial ability to pay compensation directly. In latter case Commission may require security. Employer must file annually evidence of compliance with these requirements. Subject to approval of Commission, employer may agree with employees for different system of compensation providing equal benefits.

WASHINGTON.

Act compulsory on all persons engaged in certain "extra hazardous" work, and others may elect to come in. Remedies provided are exclusive of all others. Every employer required to pay annually to State treasury a specified percentage of his pay roll. Employments are classified and premiums paid in each class from a separate fund, liable for accidents in that class, but in no other. No part of premium can be deducted from employee's wages, nor can he waive benefit of Act. Individual employers and members and officers of corporations carried on pay roll at salary not less than average, entitled to compensation the same as employees, provided notice in writing be given to Commission prior to date of injury. "Injury" does not include disease. Employer defaulting payments loses benefit of Act and liable to suit. Compensation:—1. In case of death, (a) Expenses of burial, not exceeding \$75 if deceased was unmarried, or \$100 if leaving widow or child. (b) To widow or invalid widower, monthly payment of \$30 for life or until re-marriage, and \$5 for each child under 16 not exceeding in all \$50 per month, and to widow in addition to monthly payments \$250, not to be used for burial expenses. On re-marriage widow receives \$240. (c) If no wife or husband, children under 16, each \$10 per month, not exceeding in all \$40. (d) If none of foregoing, to each other dependent one-half of average monthly support received from deceased during previous year, not exceeding \$20 per month for all. (e) Parents of unmarried workman under 21, \$20 per month until time when he would have reached that age. (f) On death of surviving spouse, to children under 16 double amount previously paid on their account, not exceeding \$40 per month. 2. In case of permanent total disability—(a) If unmarried \$30 per month. (b) If having wife or invalid husband \$30. (c) If husband not invalid \$15. (d) If having wife or husband and children under 16, or being widow or widow

having such children, \$5 additional for each child; but not more than \$50 in all. 3. In case of death during permanent total disability: (a) To widow or invalid widower \$30 per month until death or re-marriage, and \$5 additional for each child under 16; (b) to orphan child \$10 per month, not exceeding in all, \$50. In all above cases age limit of children extended to 18 if invalids. 4. In case of temporary total disability, payments as in No. 2 above as long as total disability continues, increased for first six months to amounts set forth in schedule. While disability only partial, payments continue in proportion which new earning power bears to the old; but no payment where loss of earning power is less than 5%. In case of permanent partial disability a lump sum not exceeding \$1,500. In case of death or permanent disability monthly payments may be converted into lump sum, not exceeding \$4,000. Awards may be subsequently modified. Industrial Insurance Department has charge of claims. Notice of accident must be reported at once to employer and claim filed within one year.

WEST VIRGINIA.

Act provides for workmen's compensation fund, administered by State Compensation Commission. Employers divided into classes according to nature and risk of employment, and premiums assessed accordingly. Premiums paid by employers, but ten per cent. contributed by employees and deducted from wages. Employers satisfying Commission of financial responsibility of furnishing security may pay compensation directly. Employer electing to come under Act not liable for damages at law, but must notify employees by posting notices in place of business. Employee remaining in service after such notice deemed to assent. Employers not so electing, or defaulting in payments liable to suit and deprived of three common law defenses. Act does not apply to domestic or agricultural service, to travelling salesmen, or to persons employed wholly out of the State. Compensation:—Medical, surgical and hospital treatment not exceeding \$150; but where percentage of permanent disability may be reduced by surgical or medical treatment amount may be increased to \$300. Hernia from injury to be treated by surgical operation. If injured employee refuses—unless operation unsafe—compensation suspended during refusal. No compensation for self-inflicted injury, or injury caused by wilful misconduct, disobedience to rules or intoxication. In case of death within 26 weeks, in addition to \$75 funeral expenses, payments to dependents as follows: If employee be under 21 and unmarried, to father, or if none to mother, 50% weekly wages, not exceeding \$6, until death of dependent or until employee would have been 21; to widow or invalid widower \$20 per month until death or re-marriage, and \$5 additional for each child until age when he may be lawfully employed, not exceeding \$35; in case of re-marriage within two years, 20% of the amount payable for balance of ten years from death; to orphan child or children under 15, \$10 each per month until 15, not exceeding \$30; if none of foregoing, to other dependents 50% of average monthly support during preceding 12 months, until expiration of six years from date of injury, not exceeding \$20 per month, and for persons partly dependent, the same for such portion of six years as Commission may de-

termine. In case of temporary total disability, 50% of earnings, not less than \$5 per week nor more than \$10, and for temporary or partial disability 50% loss in wages, not exceeding \$10—in both cases during the disability, not exceeding 26 weeks, but in certain cases of continuing disability 52 weeks; for permanent disability if amounting to 10% of total disability, 50% of earnings for 30 weeks, and for increased percentages to 70% for periods increasing to 210 weeks, for percentages from 70% to 85% 40% of wages, and from 85% to 100% 50% of wages, in both cases for life, and in no case less than \$4, nor more than \$8. Claim must be made within six months, and proofs of dependency filed with Commission within nine months from death.

WISCONSIN.

Employers not electing to pay under the Act deprived of defenses of assumption of risk, and, where there are three or more employees in common employment, negligence of fellow employee and negligence of injured employee unless wilful. Election by notice to Industrial Commission, good for one year, and from year to year thereafter unless withdrawn within 30 days before expiration of year. Acceptance of employer of three or more presumed unless notice given. State, counties, etc., liable as employer to employees, including police and firemen. Employees presumed to accept unless they give notice. Employees of contractor or subcontractor not subject to Act may claim either against contractor or principal employer. Latter, if liable, may recover from contractor. Act does not apply to railroad men operating trains unless employer and employees agree in writing, nor to farm labor. Compensation:—1. Medical and hospital treatment and supplies for 90 days, and for such additional period as, in judgment of Commission, may lessen period of compensation disability; also any necessary artificial limbs at end of healing period; no other compensation unless disability continues more than one week. 2. In case of death proximately resulting from injury,—to persons wholly dependent, (a) if employee was permanently totally disabled, sum equal to four times average annual earnings, but which added to disability payments to date of death shall not exceed six times average annual earnings. (b) If not permanently disabled, sum which added to disability indemnity equals four times average annual earnings. 3. If death occurs other than as proximate result of accident, before disability indemnity ceases. (a) If accident proximately causes permanent total disability, same as if accident had caused death. (b) Where accident proximately causes permanent partial disability, such benefit as fairly represents proportionate extent of earning capacity. If only partial dependents, death benefit not exceeding four times amount devoted by deceased during preceding year to support of such dependents, apportioned according to proportion of such amount to entire earnings. In all cases burial expenses not exceeding \$100. 4. In case of total disability, 65% of average weekly earnings. 5. In case of partial disability, 65% of weekly loss of wages during disability. For certain specified mutilations 65% of weekly earnings for periods specified in schedule. In case of permanent disfigurement of face, head, neck, hands or arms, not exceeding \$750. In case of temporary or partial disability aggregate indemnity not to exceed four

times average annual earnings. In case of permanent total disability, aggregate indemnity weekly indemnity for life, not exceeding for persons under 32, 15 years, and for each successive yearly age group, beginning with 32, maximum limited reduced by three months until minimum limit of nine years is reached. Weekly indemnity due on 8th day withheld but paid afterward if disability continues until 29th day. In case of permanent injury to employee over 55, compensation reduced 5%; over 60, 10%; over 65, 15%. If injury caused by failure of employer to comply with statute or order of Commission, compensation or death benefit increased 15%. If injury result from wilful failure to use safety devices, or to obey reasonable rules for safety, or from intoxication, indemnity reduced 15%. Aggregate allowance for injuries, except permanent total disability not to exceed six times annual earnings. In certain cases indemnity for minor may be trebled. Notice of injury within 30 days. If no notice or payment within two years claim barred. Employer must insure in some liability company or satisfy Commission of financial ability. Provision also made for mutual employers' insurance company.

WYOMING.

Act is mandatory on employers of five or more workmen in certain "extra-hazardous" occupations, and provisions as to rights and remedies for injuries are exclusive and obligatory both on employer and employee. Does not include injuries caused by wilful act of third person for reasons personal or because of employment, or disease except as directly resulting from injury. Industrial accident fund held by State Treasurer, formed in part by State appropriations and in part by payments by employers. Every employer in occupations specified bound to forward copy of monthly pay-roll to State Treasurer and to contribute monthly $1\frac{1}{2}\%$ of amount of pay-roll. Employer bound to report to Clerk of District Court within 20 days after accident name of workman, nature of accident and injury, and whether claim is made for compensation. Claims adjudicated and orders on fund given by Judge of District Court. Compensation:—In case of death: expenses of burial, not exceeding \$50; to widow or invalid widower \$2,000, and sum of \$100 per year for each child until 16, but not exceeding \$3,000, payment for children to be made to guardian; if workman die from injury after temporary total disability, amount paid for such disability to be deducted; if no widow, widower or child under 16, to dependent parents sum computed at rate of 50% of average monthly support received by parent for probable period of such support, not exceeding \$1,000. For permanent total disability, if workman unmarried, \$2,500; if wife or invalid husband, but no child under 16, \$2,500; if child or children under 16, an additional \$100 per year for each child until 16, not exceeding in the aggregate \$5,500. For temporary total disability, if workman be unmarried \$35 per month during total disability; if having wife \$40 per month, and if children under 16, \$6 per month for each child, total monthly payment not exceeding \$60 per month. No compensation for first ten days unless incapacity extends beyond 30 days, then from time of injury. In no case more than amount for permanent total disability. For permanent partial disability, for each spe-

cific injury amount as per schedule. In all cases of total disability and permanent partial disability medical and hospital services not exceeding \$100. No compensation for injury due solely to culpable negligence of employee. If he persists in unsanitary or injurious practices imperiling or retarding recovery or refuses to submit to reasonable medical or surgical treatment he forfeits right to compensation. Widow and children who are aliens, not residents in U. S. only 33⅓% of above compensation. No compensation to other non-resident aliens.

UNITED STATES.

Act of 1916 allows compensation for disability or death of any employee resulting from personal injury sustained while in the performance of duty, unless caused by wilful misconduct or intention to bring about injury or death of himself or another, or unless proximately caused by intoxication. Compensation:—For total disability 66⅔% of monthly pay during disability, but not more than \$66.67 nor less than \$33.30, unless monthly pay is less than \$33.33, and then full amount of pay. For partial disability, 66⅔% of difference between monthly pay and wage earning capacity after beginning of such disability, not more than \$66.67. In case of minors or learners allowance may subsequently be based on such wages as employee might have been capable of earning had he not been injured. Partially injured employee may from time to time be required to furnish affidavit as to wages or remuneration received. Employee while receiving compensation under Act not entitled to receive pay or salary, except for services actually performed, and except pensions. Immediately after injury, medical, surgical and hospital services and supplies to be furnished for a reasonable time. During first three days of disability, no other compensation. For death resulting from injury within six years, except where death takes place more than one year after cessation of disability, or, if no disability before death, more than one year after injury: (a) To widow, or wholly dependent widower, having no child, 35% of monthly pay until death or marriage. (b) to widow or widower with child or children 10% additional for each child, not exceeding total of 66⅔%. Compensation to child ceases when he dies, marries, or reaches age of 18, or if over 18 and is incapable of self-support when he becomes capable. (c) To children, if no widow or widower, 25% for one child, and 10% for each additional child, not to exceed total of 66⅔%, to be equally divided, payment to cease as above. (d) If no widow, widower or child, to one wholly dependent parent 25%, to both 20% to each; if either or both partly dependent, proportionate amount at discretion of Commission. If there be widow, widower or child, proportion of above percentages making total compensation not exceeding 66⅔%. (e) To brothers, sisters, grandparents and grandchildren—if one wholly dependent 20%, if more than one 30%, to be divided equally, subject to same limitation in case of prior claims. Compensation to beneficiary under clauses (d) and (e) payable for eight years from death or until death, marriage, or in case of adults, cessation of dependency, or in case of minors arrival at age of 18. Monthly pay to be considered as not more than \$100, nor less than \$50. Subsistence and value of quarters included as part of pay. In case of death within six years, burial expenses not exceeding \$100,

and where death occurs away from home Commission may authorize body to be sent home. Notice of injury to be given to immediate superior within forty-eight hours. No compensation allowed unless such notice given, or superior has actual knowledge, but on cause shown Commission may allow compensation if notice filed within one year. Claims for compensation for injury must be filed within 60 days after injury, or on cause shown within one year, and for death within one year after death. Act administered by U. S. Employees' Compensation Commission and, under order of President, by governor of Panama Canal or Alaskan Engineering Commission.

CHAPTER XLVII.

DEPOSITIONS AND AFFIDAVITS.

It sometimes happens that a notary public or a justice of the peace who is not a lawyer is required to take a deposition or an affidavit. We therefore subjoin forms for this purpose.

The distinction between the two is this: A deposition is taken under the authority of a court, or by provision of some special statute, usually for the purpose of taking the testimony of some person, who, by reason of infirmity or illness, or residence at a great distance or out of the jurisdiction of the court, is unable or unwilling to attend and give evidence in open court, or who is about to depart from its jurisdiction. Depositions are usually taken for use in cases pending in court. Both parties are entitled to be represented at the taking of the deposition, and the witness is subject to cross-examination.

In some States, however, it is provided by statute that, in anticipation of possible litigation the depositions of aged or infirm persons, or of those about to leave the State, may be taken in order to perpetuate their testimony for use in subsequent litigation, in case their evidence cannot then be obtained. Notice is given to all parties in interest, who may attend and cross-examine in the same manner as though the deposition were to be used in a pending case. In all cases great care should be taken to follow strictly any instructions given in the commission under which the deposition is taken.

An affidavit, on the other hand, is a sworn statement taken *ex parte*, that is, without the attendance of the adverse party, or cross-examination. Affidavits are taken for various purposes, but are usually not admissible at the trial of a case as evidence of the facts therein stated. If taken in a case pending in court, they are usually used only in support of motions, or in other subsidiary proceedings.

(347.)

Form for Taking Depositions.

Deposition of witnesses taken this _____ day of _____, 19____, at the office of _____, in the town of _____, county of _____, State of _____, pursuant to the annexed notice, to be read in evidence on behalf of the plaintiff (or defendant) in a certain suit now pending in the [here

state the court in which the case is pending], in the State of _____, where-
in A. B. is plaintiff, and C. D. defendant.

Present: E. F., attorney (or counsel) for plaintiff; G. H., attorney (or
counsel) for defendant.

I. J., a witness on behalf of the plaintiff, being of lawful age, and being
by me first duly sworn, deposes and says, in response to questions pro-
pounded by E. F., counsel (or attorney) for the plaintiff (or defendant):

1st Question—What is your name, age, residence, and occupation?

Answer, _____

2d Question—Do you know the parties to this suit?

Answer, _____

[Continue the questions until conclusion of examination in chief, and, in
writing the answers, use the identical words of the witness.]

And being cross-examined by G. H., counsel (or attorney) for defendant
(or plaintiff), the said witness deposes and says:

[Write questions and answers as before.]

And being re-examined by counsel (or attorney) for the plaintiff (or de-
fendant), the said witness further deposes and says:

[Write questions and answers as before.]

And further this deponent saith not.

(Signature of witness.)

[If there be more than one witness, continue as follows:]

And at the same time and place came K. L., another witness on behalf
of the plaintiff, who, being of lawful age (etc., same as above).

No other witness appearing, the further taking of these depositions is
continued until to-morrow, at the same place, and between the same hours.

(Signature, etc., of official.)

Office of _____, in the town of _____, county of _____, State of
_____, this _____ day of _____, 19____.

Present: E. F., attorney for plaintiff; G. H., attorney for defendant.

M. N., a witness on behalf of the plaintiff, being of lawful age, and by
me first duly sworn, deposes and says, in response to questions propounded
by counsel for the plaintiff (or defendant): _____

[Write down questions and answers as in deposition of I. J.]

And further this deponent saith not.

(Signature of witness.)

[When the depositions have been taken, conclude with the following cer-
tificate:]

State of _____, County of _____, to-wit: .

I, _____, a Justice of the Peace (or other official), in and
for the district (town or township) county of _____, State of _____, do
certify that the foregoing depositions of I. J., K. L., and M. N., [name all
the witnesses] were duly taken by me pursuant to the annexed notice for
taking depositions to be read in behalf of the plaintiff (or defendant) in the
cause of _____ against _____, now pending in the [here describe the
court in which the suit is pending], at the time and place, and within the
hours in the annexed notice specified. [If an adjournment was had, so
state here, thus:] the taking of said depositions, not having been completed

on the first day appointed, were continued from day to day at the same place and between the same hours until completed.

I further certify that after the taking of the deposition of each witness the same was read to (or by) him and subscribed by him in my presence.

And I do further certify that, at the time of so taking the same, I was a Justice of the Peace (*Notary Public, or Commissioner appointed by the Governor, etc., as the case may be*) in and for the _____, in the State of _____, my commission bearing date _____, and expiring _____.

Given under my hand (*and Notarial Seal, or official seal, as the case may be*), this _____ day of _____, 19____

(*Signature, etc., of official.*)

Cost of taking deposition, \$_____; paid by _____

After taking each deposition it should be read to the witness, or by him, and a memorandum should be made by the magistrate of any changes or corrections which the witness desires to make before signing. The witness should then sign the deposition in the magistrate's presence. If he refuses to sign that fact should be noted by the magistrate at the foot of the deposition and his return changed accordingly.

The questions on direct and cross-examination may be numbered separately; but in order to save confusion it is usually better to number them all consecutively as one series, giving the first cross-question the serial number following that of the last direct question, and so on.

(348.)

Form for Taking Affidavits.

Affidavit of A. B.

I, A B., having been duly sworn, do depose and say that I am _____ years of age, and reside in _____, in the county of _____, and State of _____, that:

[*Here state the facts to be embodied in the affidavit.*]

(*Signature of witness.*)

State _____
County of _____ } ss.

On this _____ day of _____, 19____, at my office at _____, in the city of _____, in the county and State aforesaid, before me, the subscriber, a Notary Public (or other magistrate), duly commissioned in and for said county, personally appeared the above named _____, who subscribed the foregoing affidavit in my presence, and made solemn oath that the statements therein made by him are true [except such as are made on information and belief, and those he believes to be true].

Witness my hand and notarial seal this _____ day of _____, 19____

Notary Public.

[Seal.]

If the affidavit is to be used in court it should be entitled thus:

Affidavit of A. B. to be used in a suit pending in the _____ Court, for the County of _____, in the State of _____, in which C. D. is plaintiff and E. F. as defendant, and taken on behalf of the plaintiff (or defendant) in said suit.

GLOSSARY

OF

LAW TERMS IN COMMON USE

A.

ABANDONMENT. A surrender of rights to property, or of property, by one person to another. Used in marine insurance, when the insured, having been paid as for a total loss, abandons what is left or saved of the property to the insurers.

ABATE. Literally, to throw down. Applied principally to nuisances, and then means their prostration or removal.

ABET. One abets another to commit a crime, by encouraging, commanding, procuring, or counselling him thereto.

ABDUCTION. Forcibly taking away or detaining a man's wife or child.

ABSCOND. To go out of the jurisdiction of the courts, or conceal one's self, for the purpose of avoiding their process.

ACCEPTANCE. The reception of something offered by another with the purpose of retaining it; or of an order given by another. See chapters on AGREEMENTS, SALES, and NOTES AND BILLS.

ACCESSION. The right by which one holds all of one's own property, together with all of that which has become united to it, naturally or artificially.

ACCESSORY. In criminal law, means one who is concerned in the perpetration of an offence, before the fact, by procuring, counselling, or commanding another to commit it; or, after the fact, one who, knowing the crime to have been committed, relieves, comforts, or assists the criminal.

ACCRETION. The increase of real estate by portions of soil that are added to it through the operation of natural and gradual causes.

ACCRUE. To grow from, or to be added to, as interest accrues on the principal.

ACKNOWLEDGMENT. The act of declaring an act or deed to be his by one who executed the same. There are various ways of making an acknowledgment. See chapter on DEEDS CONVEYING LAND, and forms annexed thereto.

ACT OF GOD. An accident which arises from a cause that operates without the interference of or aid from man. See chapter on CARRIAGE OF GOODS.

ACTION. Literally, a doing of any thing. In law, it means a demand, made according to the rules of law, in a court of justice, of property, or a right to property, from some other person. The word "suit" is sometimes used in the same sense.

AD LITEM. Literally, for the suit. Every court has power to appoint a guardian for the suit for one who needs such assistance.

ADJOURNMENT. Literally, putting off to another day. Generally applied to assemblies, which either adjourn without day or finally, or else to a day then or previously determined.

ADMINISTRATOR and ADMINISTRATION. See chapter on EXECUTORS AND ADMINISTRATORS.

ADMIRALTY. A court of admiralty has a large and, for some purposes, an exclusive jurisdiction over maritime causes, civil or criminal.

ADULTERY. Sexual intercourse of a married person with a person who is not the criminal's husband or wife.

ADVANCEMENT. A gift from a parent to a child by anticipation of the whole or some part of what that child would naturally inherit on the death of the parent.

ADVERSE POSSESSION. Possession or enjoyment of land under such circumstances as indicate that the land is claimed and enjoyed as the possessor's. If such possession has been continued for twenty years, the law generally raises the presumption that it was rightful.

ADVOCATE. One who assists or makes a plea or an argument for a party to an action in court.

AFFINITY. The connection or relation caused by marriage between each of the married persons and the kindred of the other.

AFFIRM, AFFIRMATION. They who have conscientious scruples against taking an oath are now generally permitted to affirm, "under the pains and penalties of perjury;" the affirmation being substituted for the oath.

AGENCY. See chapter on AGENCY.

ALIAS. Means, literally, otherwise, or at another time. A man is said to be named John Smith, *alias* Richard Roe; and if an execution is returned unsatisfied, an *alias* execution is issued.

ALIBI. Presence in a place different from that before described or alleged; as, when a man charged with an offence committed at a certain time and place proves an *alibi*; that is, that he was somewhere else at that time.

ALIEN. A person of foreign birth.

ALIMONY. Legally decreed support of wife by husband after separation.

ALLEGIANCE. The obligation or duty which holds a citizen or subject to his government or sovereign.

ALLUVION. The increase of earth on the shore of the sea or the bank of a river, caused by the water, acting slowly and gradually. If the increase is sudden and violent, and the land can be traced back to that from which it is torn, it is said to belong to the original owner.

AMBASSADOR. One sent abroad by some sovereign, prince, or State on public business. Public ministers are of different ranks. First, ambassador; then, minister plenipotentiary and envoy extraordinary; then, minister resident; then, *chargé d'affaires*.

AMBIGUITY. Literally, doubtfulness. If it be *latent*, that is, only discovered by evidence bearing on an instrument, it may be cured or explained by evidence; if it be *patent*, that is, apparent on the face of the instrument, it cannot be explained by evidence, but makes the instrument inoperative as far as the ambiguity extends.

ANCESTOR. In law, one who has preceded another in a direct line of ascent.

- ANNUITY.** A sum of money which is to be paid to another for a certain term. When this annuity is charged upon land, it is called a rent-charge.
- ANTENUPTIAL.** This word is applied to bargains and settlement made before and with a view to an expected marriage.
- APPEAL.** The removal of an action at law from an inferior court to a higher court by a party seeking a review or new trial. The party appealing is the appellant, the other party is the appellee.
- APPAISEMENT.** An accurate valuation of property. This word is mainly used in probate matters.
- APPROPRIATION.** See chapter on PAYMENT.
- APPROVER.** A word much used in English criminal law, but not so much in this country. It means one who confesses himself guilty of a crime, and accuses others for the purpose of saving himself. Here such a person is commonly said to be or to give State's evidence.
- APPURTENANCES.** Things which belong to another or principal thing, as incident to the principal thing, and which pass or go with the principal thing when that is conveyed or transferred. Mainly applied to land, but sometimes to a ship.
- ARISTOCRACY.** A government in which a class of men have supreme and exclusive authority.
- ARRAIGN.** A prisoner is arraigned when he is called to the bar of a court to answer the charge in the indictment or complaint.
- ARRAY.** The whole number of persons who are summoned to court to serve as jurymen. From the whole array are selected those who serve on the several juries.
- ARREST.** The seizing of a person, and depriving him of his liberty, by legal authority and process.
- ARSON.** The malicious burning of the house of another person. Some part of it must be burned; but the word "house" here comprehends all out-houses, such as barn or stable, cow-house, and the like, which belong to the house, and are within the *curtilage*, or the common fence, which includes them all.
- ARTICLES.** The specific divisions of a document or instrument, written or printed. Thus the name was given to the articles of confederation which preceded our Constitution. Articles of impeachment are the specific allegations charged against the impeached. Articles of partnership are the specific agreements of the parties. Articles of war is the name given to the code of laws, established for the government of the army, and to that for the government of the navy.
- ASSASSINATION.** Is, in law, murder committed for hire, and with no personal cause moving from the murdered to the murderer.
- ASSAULT.** An illegal and forcible attempt or offer to do a bodily harm to another.
- ASSIGN.** To transfer or make over to another. See chapter on ASSIGNMENTS.
- ASSURANCE.** Same as insurance; so of Assured and Assurer. Also, sometimes, an instrument which confirms the title to an estate.

ATTAINDER. Sentence of treason by a governing body without judicial trial, with forfeiture of property and of right of transmitting by inheritance.

ATTORNEY. One who has been put by some person in his place or stead, with authority to manage some business for him. See chapter on AGENCY. An attorney-at-law is an officer in a court of justice who has been admitted to practice there.

AUTHORITIES. The decisions of courts which are referred to as declaring or confirming some point of law.

AUTHORITY. The delegation of power by a principal to some person as his agent or attorney. See chapter on AGENCY.

AVERAGE. A term mainly used in marine insurance. A general average loss is, in insurance and shipping law, a loss purposely incurred or sustained for the common benefit of the ship, freight, and cargo; all three of which interests contribute to make up the loss, in proportion to their respective values incurring the same danger and escaping from it. Particular average is a loss on either the ship, the cargo, or the freight, and is borne by the owner or insurer of that interest; it is often called a partial loss.

AWARD. See chapter on ARBITRATION.

B.

BAIL. This word commonly means those persons who become sureties for the appearance of a defendant in court, and to whom he is delivered. The powers of bail over a defendant are very great. When they are provided with the proper instrument from the court, they may arrest him wherever he is, although in a different State, or whatever he may be employed about, even on Sunday, and may do whatever is necessary to get at him; and they may command the assistance of the sheriff and other civil officers.

BAIL-BOND. This is the bond by which the bail becomes securities for the defendants. Our Constitution prohibits the requiring of excessive bail.

BAILMENT. The putting something into the hands of another, or delivering it to him. The bailor is he who delivers; the bailee, he to whom delivery is made. See chapter on BAILMENTS.

BANK-NOTE, OR BANK-BILL. See chapter on NOTES AND BILLS.

BANKRUPT. One who has been judicially declared to be unable to meet his liabilities. See chapter on BANKRUPTCY.

BANNS OF MATRIMONY. A public notice or declaration of the intention of a man and woman to marry each other; the purpose being, that persons objecting to the marriage may have an opportunity to interpose their objections before the marriage takes place.

BAR. A bar to an action is a perpetual and sufficient obstacle. The word also means the whole collective body of the members of the legal profession in a county, city, or State.

BARGAIN AND SALE. This phrase is applied in law to a contract between two parties, by which land is sold and transferred.

- BARRISTER.** This name is given in England originally, and was formerly given in this country, to lawyers admitted to the bar, or to conduct and argue cases in court; but it is not now much, if ever, used in this country.
- BASTARD.** One who is born of an unlawful connection; an illegitimate child. In many of our States, a child of parents who afterwards marry and acknowledge him or her as their own is legitimated.
- BATTERY.** Any unlawful, beating or personal violence, however slight. Spitting in one's face may be a battery.
- BED.** The bed of a stream is that part between the banks which is occupied and covered by the water when it does not spread over and beyond its banks.
- BENEFIT OF CLERGY.** In England, a clergyman was exempt from the punishment of death; and in ancient times, any one who could read was entitled to this benefit.
- BEQUEATH.** See chapter on DISPOSAL OF PROPERTY BY WILL.
- BIGAMY.** The knowingly marrying a second time when a former marriage still exists.
- BILL.** A complaint in equity or chancery addressed to the chancellor, or to a court of equity, and containing the particulars of the action.
- BILL (legislative).** A draft of a proposed statute before a legislature.
- BILL OF EXCHANGE.** See chapter on NOTES AND BILLS.
- BILL OF LADING.** A receipt for the carriage and delivery of goods, to be carried by sea, for a certain freight. See chapter on CARRIAGE OF GOODS.
- BLASPHEMY.** In law, any false statement or language intended as a reviling of God.
- BLOCKADE.** The actual investment of a place by an enemy with a force sufficient to cut off communication, or make it difficult and hazardous.
- BONA FIDE.** In good faith; honest.
- BOND.** A written and sealed obligation. See chapter on BONDS.
- BOTTOMRY.** A kind of mortgage of a ship, for money borrowed. It pledges the ship with extraordinary interest, the lender losing his money if the ship be lost.
- BOUGHT AND SOLD NOTES.** Memoranda in writing given by a broker who has made a sale, to him for whom the broker sells, and to the buyer, describing the goods and stating the terms of the sale.
- BREACH.** In the law of contracts, is the violation of an agreement or obligation.
- BURGLARY.** The breaking and entering the house of another in the night-time, with the intent to commit a felony therein.
- BY-LAWS.** Every corporation has a right to make rules for its own government; and these are by-laws; sometimes spelled bye-laws.

C.

- CAPIAS.** This is the name of a writ, by which a sheriff is ordered to take a person into his custody, and do with him what this writ requires. It is of many kinds.
- CHANCELLOR.** A judge who presides over a court of chancery or equity.

CHARTER-PARTY. A contract by which the owner of a vessel lets the whole or a part of her to another person for a particular voyage, or a particular time, for the conveyance of goods.

CHATTEL. This word commonly means goods of any kind, or every species of personal property.

CHATTELS REAL. Interests annexed to or concerning real estate, less than a freehold; as a lease for years.

CHECK. See chapter on **NOTES AND BILLS.**

CHOSE IN ACTION. The right to demand and recover a debt or money. This word is sometimes applied to the evidence of the right, as bills of exchange, promissory notes, bank-bills, and other instruments.

CIVIL LAW. By this phrase is usually meant the system of law of ancient Rome.

CLEARANCE. A certificate which the collector of a port gives to the master of a vessel, stating where it is bound to, and that he has entered and cleared the vessel according to law. A vessel found at sea without a clearance may be legally taken and brought into some court for adjudication.

CODE. A body of law intended to embrace and regulate all the rules of law, as far as they are within its scope.

CODICIL. A little will which adds to or modifies a former will, but does not repeal it.

COLLISION. The striking together or running against each other of vessels.

COLLUSION. A fraudulent agreement between two or more persons to deprive another of his rights of property.

COMMON CARRIERS. See chapter on **CARRIAGES OF GOODS.**

COMMON LAW. The system of law prevailing in England and this country, on the authority of usage, or the decisions of courts, and not on statutes. That which depends on statutes is called statute law.

COMMORANT. Residing or dwelling in a certain place.

COMPETENCY. The legal fitness of a witness to give evidence on the trial of an action.

COMPOUND INTEREST. See chapter on **INTEREST.**

COMPOUNDING A FELONY. Agreement, for a consideration, not to prosecute a criminal.

CONDONATION. Conduct by which husband or wife is held to have pardoned matrimonial offenses of the other partner, and is therefore barred from suit for separation; as resuming conjugal relations after a known adultery.

CONFIDENTIAL COMMUNICATIONS. A counsellor, solicitor, or attorney cannot be compelled to exhibit papers or disclose communications received by him in his official capacity.

CONFISCATE. To appropriate property to the use of the State which has been forfeited by some offence.

CONSANGUINITY. Relationship by blood.

CONSIDERATION. See chapter on **AGREEMENTS.**

CONTINGENT. That which will come upon the happening of an event which may or may not take place. The word is applied to legacies, damages, and remainders, which words see.

CONTINUANCE. The adjournment of an action, or the trial thereof, from one day or one term to another.

CONTRIBUTION. If two or more persons are liable jointly for a debt, and one is compelled to pay the whole, or more than his share, he may call upon the others to contribute their proportion.

CONVEYANCE. The transfer of lands or vessels from one person to another.

CONVEYANCER. One whose business it is to draw instruments of conveyance.

COPYRIGHT. The exclusive privilege of printing, publishing, and selling copies of copyrighted books, writings, drawings, and sundry other similar things, which the law of copyright describes.

COUPONS. From a French word, meaning to cut. They are little papers attached to bonds or other instruments, each one promising to pay the interest due on a certain day, and it is cut off and presented for payment when due.

COVENANT. See chapter on DEEDS.

CROSS-EXAMINATION. Examination of a witness by a party who did not call him. A party who calls a witness on a trial examines him in chief; and when he has finished, the other party has a right to cross-examine him.

D.

DAMAGES. The sum claimed or recovered by one who has sustained an injury in person, property, or rights, from him who has caused the injury.

DECLARATION. A specification filed in an action, stating the circumstances on which the plaintiff founds his claim.

DEDICATION. This word means, in law, an appropriation of land to a public use, either by deed or declaration, or by acquiescence for a sufficient time in the public use.

DEED. See chapter on DEEDS.

DEFEASANCE. An instrument which defeats the force and effect of some other instrument, on some condition or contingency. If a deed be made of land, and a deed of defeasance received back, the two together make a mortgage. See chapter on MORTGAGES.

DEMESNE. Lands which the owner holds in absolute property, and not of another.

DEMISE. A conveyance of land. This word is also sometimes used as synonymous with death; as the demise of a king.

DEMURRER. A plea or allegation by a party to an action, that, even if the facts be truly stated by the other party, they do not give him any cause of action, or any good defense.

DEMIZEN. An alien born, who has letters-patent from the sovereign which give him the right of a subject. In this country the word "citizen" is almost exclusively used.

DEPOSIT. A delivery of goods, to be kept for the benefit of the depositor, and subject to his order, without compensation.

DEPOSITION. The testimony of a witness, which has been reduced to writing in accordance with the requirements of law.

DERELICT. Deserted; abandoned. Applied in law principally to vessels deserted by their crew, with no purpose of returning.

- DESCENT.** Succession from parents or ancestors. Rules of descent in case of intestacy are provided by State statutes.
- DETAINER.** Keeping goods or other property from the owner against his will; or holding a person against his will.
- DEVIATION.** In the law of marine insurance, means a departure from or variation of the risks insured against by the policy, without sufficient cause.
- DISBAR.** To expel from the bar one who has been admitted to practice within it.
- DISHONOR.** In commercial law, means the non-payment of negotiable paper when it is due.
- DISTRESS.** The process made use of for enforcing the payment of rent, or other dues, by the taking of personal chattels from the non-payer. Also **DISTRAINING.**
- DOMAIN.** The estate or land lying about a mansion-house, and attached to it.
- DOMICILE.** See chapter on **LAW OF PLACE.**
- DOMINANT.** See **SERVIENT.**
- DORMANT.** See chapter on **PARTNERSHIP.**
- DOWER.** A widow has her dower, which means an estate for life in one-third part of the lands or tenements of her husband.
- DRAWBACK.** An allowance or return made by government to merchants, on the re-exportation of certain goods liable to duties and entitled to drawback.
- DRAWER, DRAWEE, DRAWING.** For these words see chapter on **NOTES AND BILLS.**
- DUE-BILL.** A mere acknowledgment in writing of a debt.
- DURESS.** Personal restraint or compulsion, or fear thereof.

E.

- EARNEST.** The delivery and acceptance of a part of the price of goods sold, to show that the parties are in earnest and to make the contract binding.
- EASEMENT.** A right which the owner of one parcel of land has over that of another, for some special purpose, as air, light, way, or drainage.
- EMBEZZLEMENT.** Fraudulently appropriating to one's use property with which the party has been intrusted.
- EMBLEMENTS.** The right of a tenant, when his tenancy has ended, to return and take and carry away the product of land which he planted during his tenancy.
- EMINENT DOMAIN.** The inherent sovereign power of the State of taking or controlling private property for public purposes by making compensation.
- ENACT.** To make a law, or establish by law. Laws usually begin, "Be it enacted."
- ENFRANCHISE.** To give to any man freedom in a society or body politic.
- ENTAIL.** An estate is entailed when it is limited or restricted to a particular class of issue, and not to the heirs general.

EQUITY. A branch or method of remedial justice, administered in courts of equity. This was originally administered as the court thought just and reasonable in any case; but the system of equity law is now as well defined and exact as that of common law.

EQUITY OF REDEMPTION. See chapter on **MORTGAGES**.

ESCHEAT. A reverting of lands to the government, on the entire failure of heirs of a deceased owner.

ESCEW. A deed which is delivered to a stranger, for him to deliver to the grantee therein named, on the happening of certain conditions.

ESTATE. This word means, in law, the kind, quantity, and extent of interest which a person has in real property; as the estate in fee, when he owns it absolutely, or an estate for life, or an estate for years.

EVICION. Depriving a person of the possession of lands or tenements by judgment of law, or under paramount title.

EVIDENCE. All the means by which any matter of fact that is alleged is established, or is disproved.

EXCISE. Tax paid on the retail sale, or on the consumption of, certain commodities.

EXPERTS. Persons who are selected by the parties in a case, to give evidence on some point by reason of their peculiar knowledge or skill therein.

EXTORTION. Is, in law, the unlawful taking by an officer, of money, or any thing of value not due to him, by an abuse of his office.

EXTRADITION. The surrender or delivery by one sovereign State to another of persons charged with the commission of crime, within the jurisdiction of the requesting State. Extradition between our States is regulated by the national constitution and laws. We have also treaties of extradition with many foreign States.

F.

FALSE IMPRISONMENT. An unlawful restraint of a man's liberty, in any place, or by any means whatever, even by words only.

FEE-SIMPLE. The largest estate a man can have in land. He can dispose of it at his pleasure, and when he dies, it goes to his heirs or devisees.

FEE-TAIL. An heritable estate, which is limited to certain classes of heirs of the body.

FELONY. In the law of this country it means generally any great crime. In some States it is defined by statutes.

FEME COVERT. A married woman.

FEME SOLE. A single woman.

FEUDAL LAW. Sometimes spelled feudal law. A system of tenures, by which real property was held in western Europe during the Middle Ages, and which has remained there to some extent to the present day, although for the most part abolished.

FIDUCIARY. A fiduciary estate or property is that which a person holds in trust for some other person, who is the beneficiary.

FIRM. This word sometimes means the name under which the members of a partnership transact business, and sometimes means the members who compose the partnership.

FLAG. By a statute of 1818, the flag of the United States consists of thirteen horizontal stripes, alternate red and white, while the Union (or that part of the flag in the corner of it) was to have twenty stars, with one star more for every State admitted thereafter.

FORECLOSURE. Literally, to shut or bar out. It is used in law to describe a process made use of for the purpose of putting an end to an equity of redemption.

FOREIGN ATTACHMENT. As commonly used, this means the process by which a creditor gets the property of his debtor placed by him in the hands of another; or money due from that other to his debtor.

FORNICATION. Sexual intercourse of an unmarried person with a married or unmarried person.

FRANCHISE. A privilege, or right, conferred by grant from government upon individuals.

FRAUD. The unlawful appropriation of the property or rights of another, knowingly and designedly.

FREEHOLD. An estate of inheritance or for a life; a larger estate than an estate for years or at will.

FREIGHT. Means, in maritime law, either the amount paid for the carriage of goods, from one port to another, or the goods which are so carried.

FUGITIVE FROM JUSTICE. A criminal who seeks to escape punishment by fleeing from the jurisdiction within which the crime was committed.

FUNGIBLE. An article loaned, but to be consumed by the borrower, as food, clothing, and the like.

G.

GARNISHEE. One who has in his hands money or property belonging to a defendant, and attached by a process of foreign attachment.

GIFT. A transfer of property without consideration, and legally needing none.

GOOD-WILL. The benefit arising from the successful conduct of business by a certain person or firm, usually in a certain place; it is a property subject to transfer.

GOODS AND CHATTELS. This word in contracts includes, with all personal property in possession, *choses in action*, and chattels real.

GRANT. A word which is applicable to all transfers of real property.

GROUND-RENT. A rent which the owner of unimproved land reserves when he leases the land to be built upon.

GUARANTY. A promise or undertaking to answer for the liability of another. Guarantor is he who makes the guaranty; the guarantee is he to whom the guaranty is made.

GUEST. A guest at an inn is distinguished from a boarder, in that he makes no contract to remain or pay for a certain time. If he make such a contract, he is not a guest, but a boarder, although at an inn; and the innkeeper is not liable for loss or injury to his goods without the innkeeper's fault. He is so liable to a guest.

H.

HALF-BLOOD. The degree of relationship existing between those who have the same father or the same mother, but not both.

HEARSAY EVIDENCE. A statement which a witness makes of what he was told by some other person, or heard him say, but does not know himself.

HEIR. In this country the word is applied to all persons who are called to the succession of property.

HEIR-APPARENT. One who must succeed to the inheritance, provided he outlives the ancestor.

HEIR-PRESUMPTIVE. One who will succeed to the inheritance if he outlives the ancestor and no person is born before the ancestor's death who has a nearer claim.

HEREDITAMENT. Any thing capable of being inherited.

HIGHWAY. A street or road, or way, which all citizens have a right in common to use.

HOMESTEAD. In this country, that portion of land, including the residence of the owner, which the law exempts from liability to debt.

I.

ILLICIT. That which is forbidden by the law.

IMPEACHMENT. Criminal trial of high public officers by special procedure.

IMPERTINENT. This word means, in law, matters introduced into any proceeding in a suit which are not properly before the court in that stage of the proceeding.

IMPOSTS. Duties or taxes laid upon imported goods or merchandise.

INDEMNITY. Compensation for damage suffered, or that which is given or promised to a person to prevent his suffering damage.

INDENTURE. A written and sealed instrument between two or more persons, each of whom has a copy. It is distinguished from a deed-poll, which is made by one person only.

INDICTMENT. A written accusation, made by the government through the proper officer, and presented as true by a grand jury.

INDORSE, INDORSEMENT, and INDORSER (sometimes spelled endorsement). See chapter on **BILLS AND NOTES**.

INFANT. In law, is one under the age of twenty-one years. See chapter on **INFANTS**.

INFORMATION. A complaint or accusation against a person, charging him with some offence, presented to a court having jurisdiction by a proper officer. It differs from an indictment in that it does not require the intervention of a grand jury.

INFRINGEMENT. In patent law, means the act of violating the right secured by a patent or copyright.

INJUNCTION. A prohibitory writ, issued by a judge or court having jurisdiction, forbidding the doing of some specified act.

INQUEST. A body of men authorized by law to inquire into certain matters. A grand jury is often called the Grand Inquest.

IN REM. Proceedings against a thing, as distinguished from those *in personam* against a person, as for instance an admiralty suit for salvage against a vessel, or for forfeiture of goods seized for violation of customs laws.

INSOLVENCY. In this country, means much the same as bankruptcy; inability to pay one's debts.

INSURANCE. By a contract of insurance, the insurers for an agreed premium, promise to indemnify the insured against loss by marine perils, or by fire, or accident, or the death of a life-insured.

INTERNATIONAL LAW. That system of rules which Christian and civilized States acknowledge to be binding upon them in their conduct towards each other, and to the subjects or citizens of each other. It is founded upon moral right, and not upon any controlling and sovereign authority.

INTESTATE. One who dies without a valid will.

INVENTION. In patent law, signifies, strictly, the finding out and making of something which is new, or which will accomplish a new use.

INVOICE. In commercial law, signifies a paper which describes the merchandise sent by consignors to consignees, with marks or numbers designating each package.

ISSUE. In the law of descent and distribution of property, includes all those who have descended from the common ancestor. In pleading, this word means a single and certain point material to the action affirmed by one party and denied by the other.

J.

JETTISON. Sometimes called jetsam. The throwing overboard of a part of the cargo to relieve the vessel. Sometimes it means the things so thrown over.

JOINT TENANCY. An ownership in lands by two or more persons, the principal feature of which is that on the death of one joint tenant his interest passes, not to his heirs, but to his co-tenants. See **TENANCY IN COMMON.**

JOINTURE. An estate or interest in lands or tenements which will take effect when the husband dies, for the benefit of the wife, and during her life.

JUDGMENT. The final conclusion, or decision, or sentence of the law, pronounced by a competent court, as the final result of proceedings instituted therein.

JURISDICTION. The right and power of a court lawfully to hear and determine the cause before it, and enforce the execution of its judgment.

JUSTICE. As a title, is used in the United States as synonymous with judge.

L.

LACHES. Negligence. Usually the neglect for an unreasonable time to enforce a legal right.

LANDLORD AND TENANT. See chapter on **LEASES.**

LAPSED LEGACY. A legacy lapses if the legatee dies before the testator; that is, it becomes void, unless the legacy is in words of inheritance, as to A B and his heirs, in which case it survives to the heirs.

LAW-MERCHANT. The body of rules and usages in force in matters of commerce.

LEASE. See chapter on **LEASES**.

LEGITIMATE CHILDREN. Those born in wedlock.

LEVY. This word means to raise, as to levy a tax; or to begin, as to levy war. In practice, it commonly means the obtaining the money for which an execution has been issued.

LIBEL. A malicious defamation in writing or print tending to injure the reputation of another; also in admiralty law the written statement of the plaintiff's claim, corresponding to the declaration in an action at law.

LIEN. A hold which one person has upon the property of another by way of security for a debt or claim.

LIMITATIONS. See chapter on **LIMITATIONS**.

LIQUIDATE. To pay; to settle an account. Liquidated damages are damages agreed upon in anticipation of the breach for which they shall be paid.

M.

MALFEASANCE. The doing of some injurious act, which the party had no right to do.

MALICIOUS PROSECUTION. A civil or criminal suit, instituted maliciously and without probable cause.

MANDAMUS. A writ issued by the highest court of general jurisdiction in a State, ordering some person, corporation, or inferior court to do the thing therein specified, which belongs to their office or duty.

MANIFEST. A written statement of a cargo of a commercial vessel. It is required by law in this country.

MANSLAUGHTER. The killing of another, which is unlawful, but without malice aforethought.

MANUMISSION. Making a slave free.

MARKET OVERT. An open or public market, legally constituted. It is nearly unknown in this country, or rather every store, shop, or place of sale is a market overt here.

MAYHEM. Depriving a person with force, and unlawfully, of a member, the loss of which makes him less able to fight with an adversary; as his eye, hand, finger, or foretooth. The common word "maim" is derived from this, but has a less limited meaning.

MAYOR. The chief executive magistrate of a city.

MESNE. Middle or intermediate. Mesne profits are those which a man draws from an estate from the time that he obtained possession to the time when he was evicted, by one having a better title.

MISDEMEANOR. This word includes offences punishable by indictment, and inferior to felony; such as perjury, conspiracy, libel, and battery.

MISFEASANCE. The doing in a wrongful and an injurious way an act which might lawfully be done in a proper manner.

MISREPRESENTATION. This word signifies, in law, a statement which a party to a contract makes concerning it, and which he knows to be untrue.

MOIETY. The half of a thing.

MONITION. A process like a summons, used in this country in admiralty courts.

MORTGAGE. See chapter on MORTGAGES.

MORTMAIN. Literally, a dead hand. In England, real property granted or devised to a religious corporation could not pass out of its possession by death, because a corporation does not die; and statutes of *mortmain* were passed, impeding such grants or sales.

MOVABLES. Personal chattels which a man can carry with him wherever he goes.

MULCT. A fine imposed for some offence.

MUNICIPAL. Of or belonging to a city; but municipal law is the name given to the system of law of any one nation or State, as distinguished from international law.

MURDER. The wilful killing of any person with malice aforethought. In most of our States murder is defined as of various degrees, according to the circumstances which indicate the character of the malice.

MUTINY. The unlawful resistance of a superior officer by sedition or revolt, in the army or navy, or on board of any vessel.

N.

NATURAL CHILDREN. Children born out of wedlock.

NATURALIZATION. Conferring citizens' rights on foreigners.

NAVIGABLE. All navigable waters are subject to the use of the public, as navigable highways, the soil beneath them remaining the property of the riparian proprietors, or of the State. Navigable waters are in this country held to be all those capable of floating vessels, boats, logs, rafts, or any products of the country through which they flow.

NISI PRIUS. A *nisi prius* term is that held by a court for the trial of cases by a jury.

NONAGE. Minority, or a less age than twenty-one years. See chapter on INFANTS.

NONSUIT. Usually means an abandonment of his cause by the plaintiff, whereupon a judgment is entered against him.

NOTARY PUBLIC. An officer, appointed variously under the laws of different States, whose acts are respected by the law-merchant and the law of nations, and hence have force out of their own State or country.

NOVATION. The substitution of a new debt or obligation for a former one, which it extinguishes.

NUNCUPATIVE WILL. A will declared orally before witnesses, by a testator when dying, and afterwards reduced to writing.

O.

OBLIGATION. In law, is much the same thing as a bond. Obligor is he who enters into the obligation; obligee, he in whose favor it is contracted.

OLOGRAPHIC WILL. A will written wholly by the testator with his own hand.

ORDINANCE. A rule, or order, or law. Usually applied to the laws of a city.

ORDINARY. The name given in some of our States to the officer elsewhere called a surrogate or judge of probate.

OUTRAGE. A great wrong or injury to the person, property, rights, or honor of another.

P.

PANDECTS. The name of a compilation of the civil or Roman law, made by the Emperor Justinian, A.D. 533. It is sometimes called the Digest.

PANEL. Usually means, in law, the body of jurors who are impanelled to try a case; also the whole list returned by the sheriff.

PART OWNERS. In law, is usually applied to two or more persons, who are not partners, but who own a vessel together.

PARTIAL LOSS. See **AVERAGE**.

PARTITION. The division of lands, tenements, or hereditaments, goods and chattels, between persons who own them as co-proprietors. It is usually applied to the division of estates among such persons.

PARTNERSHIP. See chapter on **PARTNERSHIP**.

PASSPORT. A document by which the Secretary of State certifies that the bearer, who is described therein, is a citizen of the United States.

PATENT, or LETTERS-PATENT. Is the grant by the government to some person of an exclusive right to make and sell some new and useful invention made by him. He to whom a patent is granted is called a patentee. See chapter on **PATENTS**.

PAYMENT. See chapter on **PAYMENT**.

PENITENTIARY. A prison or place of confinement for convicted criminals.

PER CAPITA. A Latin phrase, opposed to *per stirpes*. Descendants of a deceased take *per capita* when they are all counted as individuals, and they take *per stirpes*, or *by right of representation*, when a certain number of them take together what their deceased parent would have taken.

PEREMPTORY CHALLENGE. A challenge of a juror, which means a refusal to permit him to sit on the trial, allowed to certain criminals without showing cause, up to a certain number of jurors.

PERILS OF THE SEA. A phrase used in bills of lading, and in policies of insurance, which includes all the dangers naturally incident to navigation. It has been held in this country to mean and include "perils of the river."

PERISHABLE GOODS. Goods which easily decay and lose their value by being kept. Mainly used in insurance law.

PERJURY. A wilfully false statement, by one who is lawfully required to depose the truth, and who is lawfully sworn, made in a judicial proceeding, and in relation to a matter that is material to the point in question.

PIRACY. Any forcible robbery or deprivation, on the high seas, done without lawful authority, and with wrongful purpose. A pirate is considered in law the enemy of the human race, and all men may attack him.

PLEA. In conversation, this word is often used as meaning an argument in court. In law, it means the special written answer, showing why an action is not maintainable.

PLEDGE, or PAWN. A bailment or delivery of personal property as security for some debt or undertaking.

POLICE. Officers appointed to maintain public peace among persons are called officers of the police; but the word is sometimes used as meaning the general care of a city or other place for the same purpose, or the rules and ordinances made therefor.

POLICY OF INSURANCE. The instrument whereby insurance is made against perils of the sea, or fire, or accident, or on life.

POLL. An old word signifying head; thus a poll-tax is that imposed upon the people, at so much a head, equally.

POSSE-COMITATUS. This means the power of the county. A sheriff or other peace officer has a right to call every male person in the county to his aid, for the purpose of preserving the public peace, excepting only those too infirm of body or mind to assist.

POST. After. An instrument is post-dated if it has a date subsequent to that at which it is actually made.

POST-MARKS. Are received in law as evidence of the fact and the time of a letter passing through the post-office.

POUND. The place which is inclosed by public authority, where stray animals may be placed, until reclaimed according to law.

PRÆCEPT. In law, means a writ directed to some officer, commanding him to do something.

PREMIUM. In the law of insurance, is the consideration paid or promised, for the insurance.

PRESUMPTION. An inference of the law from certain facts, of some other fact or proposition.

PRIMA FACIE. Literally, at the first appearance. *Prima facie* evidence is that which is sufficient to establish a fact, unless it be rebutted or contradicted.

PRIMOGENITURE. The right of primogeniture gives an estate to the eldest son in preference to the other children. It does not exist in the United States.

PRINCIPAL. See chapter on AGENCY.

PRIVATEER. A vessel owned by private individuals, and armed by them, but authorized by a belligerent government to carry on maritime war against the enemy.

PRIZE. A vessel or goods of an enemy taken and detained at sea, by the authority of a belligerent power, to be sent into some convenient port for adjudication.

PROCESS. The method which the law uses to compel compliance with the commands of a court. In patent law this word signifies the art or the method by which a result that is patented is produced.

PROCTOR. In courts of admiralty, what an attorney or solicitor is in other courts.

PROMISSORY NOTE. See chapter on NOTES AND BILLS.

PROSECUTION. The means and method of bringing a supposed criminal to justice by courts of law.

PROTEST. The act of a notary public, made on the dishonor of negotiable paper, by which it is declared that all parties to the paper will be held responsible to the holder for all damages. Also, in maritime law, a statement by the master of a vessel, duly attested by a competent person, in which the circumstances of a voyage or an accident by which the ship has sustained injury, are fully described.

PROXY. A person representing another with the right of voting. It is also used as the name of the instrument by which a person is so appointed and authorized.

PUTATIVE. Reputed or supposed to be. The word is most commonly applied to the father of an illegitimate child.

Q.

QUASH. To overthrow, dismiss, or annul legal proceedings.

QUO WARRANTO. The writ or process by which the government inquires by what right or warrant a person or corporation holds an office or a right, for the purpose of dispossessing him of it, if not in lawful possession.

QUORUM. The number of persons belonging to an assembly, society, or other body who must be present that the business may be lawfully transacted.

R.

RATIFICATION. Giving force to a contract made by the person in question but not now in force, or by another man as his agent.

REAL PROPERTY. Land and whatever is built upon or growing upon the same, whether it be on or beneath the surface or above the surface.

RECEIVER. Usually means a person appointed by a court to take and hold property in dispute, or the property of a bankrupt.

RECOGNIZANCE. An obligation of record which a person enters into before a court or officer having authority to receive it, with a condition which requires him to do some specified act; usually, to appear in court at a certain time or on a certain event.

RECOUPMENT. A law term, recently introduced into practice, and meaning much the same as a set-off against or a reduction from the claim of a plaintiff.

REFERENCE. See chapter on **ARBITRATION**.

REMAINDER. When a grant or will creates a particular estate in one person, which will cease on a certain event, and then gives the estate over to another, this latter part of the estate is called the remainder. It may be contingent, when the event may never take place; or vested, when the remainder-man acquires an immediate interest in the estate, although it is to be enjoyed only when the event happens.

RENT. See chapter on **LEASE**.

REPLEVIN. That form of action by which a plaintiff seeks to recover the possession of personal chattels which have been taken from him unlawfully.

REPRIEVE. The withdrawing of a sentence of a criminal, which delays execution for a certain time.

- RESCISSION.** The annulling or dissolution of contracts by mutual consent, or by one party because of the breach of the contract by the other.
- RESCUE.** A forcible deliverance of a prisoner from the custody of the law by a third person.
- RESIDUARY CLAUSE.** That part of the will by which all of the property is disposed of which remains after satisfying devises and bequests. Residuary legacy is the remainder of the property after specific bequests or legacies.
- RESPONDENT.** In equity law, the person who answers to a bill or complaint.
- RETAINER.** Usually means the fee by which a client engages an attorney-at-law to do certain business for him.
- REVOLT.** The endeavor of one or more of the crew of a vessel to overthrow the legitimate authority of those in command.
- RIGHT.** Means, in law, a claim which is founded upon law and fact.
- RIOT.** A disturbance of the peace, by three or more persons conspiring to raise a tumult, or do some wrong thing, in a violent and turbulent manner.
- RIPARIAN PROPRIETORS.** Those who own the land upon the shore or boundary of the sea, or a lake or a watercourse. Generally a riparian proprietor owns the bed of the river adjoining his land, as far as the thread or central line of the stream.
- ROBBERY.** The forcible and wrongful taking from the person of another of goods or money, and putting him in fear. Threats may be violence enough to make the offence robbery.

S.

- SALE.** See chapter on SALES OF PERSONAL PROPERTY.
- SALVAGE.** Property saved from a peril of the sea; or compensation given by an admiralty court for service rendered in saving it.
- SCROLL.** In law, is a mark used in the place of a seal; sometimes spelled scroll.
- SEAL.** An impression upon any impressible substances as wax; or a piece of paper pasted on with intent to make a seal of it.
- SEARCH-WARRANT.** This is addressed to an officer, and requires him to search a house or place therein specified, for property alleged to have been stolen.
- SEAWORTHINESS.** The fitness of a vessel in all respects of materials, equipment, and construction, for the service in which it is employed.
- SEDITION.** Means, in criminal law, the raising of disturbances or commotions in the State.
- SEISIN.** Possession of land by one who claims a freehold interest therein.
- SERVIENT.** In the law of easements, if a certain estate has a right over or against another estate, as a right of drainage through it, the estate to which the right is attached is *dominant*, and the estate against which the right operates is *servient*.
- SET-OFF.** A demand by a defendant, against a plaintiff, by which he seeks to reduce or destroy his claim.
- SIGN or SIGNATURE.** The writing of a man's name, as a sign or token that he assents to the instrument, or that it is his.

SLANDER. False, defamatory words spoken of another.

SOLICITOR. Means, in chancery courts, what an attorney does in other courts.

SPECIALTY. A writing sealed and delivered, wherein an agreement or obligation is stated.

SPECIFIC PERFORMANCE. The fulfilment or performance of a contract by the party bound to perform it. This a court of equity will compel, if sufficient reasons be shown.

SPECIFICATION. In patent law, a specific and detailed account of the invention to be patented.

STATUTE. A law enacted by a legislative power.

STOPPAGE IN TRANSITU. See chapter on SALES.

SUBORNATION OF PERJURY. The inducing or procuring a person to commit legal perjury.

SUBPENA. A writ or process summoning a person to appear and give testimony, or to submit himself to what the court may order.

SUFFRAGE. The act of voting; the vote itself.

SUIT. Synonymous with action at law.

SUNDAY. The first day of the week. The legal name of this day in some States is the Lord's day. Generally it begins at twelve o'clock on the night between Saturday and Sunday, and continues twenty-four hours. In some of the New England States it formerly began at sunsetting on Saturday, and ended at sunsetting on Sunday.

SURETY. See chapter on GUARANTY.

SURROGATE. A term used in some States to denote the officer in other States called judge of probate or ordinary.

T

TENANCY IN COMMON. An ownership in land, by two or more persons, called tenants in common, each owning an undivided part of the whole, which on his death passes to his heirs or devisees.

TENANT. See chapter on LEASES.

TENDER. A legal tender is that which the law of a State makes competent to be paid as money, and with the effect of money. Also an offer to make payment or deliver something in pursuance of some contract or obligation.

TENURE. The manner in which or by which a man holds an estate in lands.

TESTAMENT. Another name for a will. The testator is one who has made a will.

TITLE-DEEDS. Deeds which are evidences of the title of him who owns an estate.

TOET. A private wrong or injury other than the breach of a contract.

TRADE-MARKS. A mark which a tradesman puts upon goods that he has manufactured, by way of symbol, emblem, or sign that they were made by him or for him, and that he claims an exclusive right to sell them. See chapter on TRADE-MARKS.

TRESPASS. Any wrongful act of one person whereby another person is injured.

TRUST. Is, in law, a right or a property which one person holds for the benefit of another. The person holding it is called the trustee, and he for whose benefit it is held is called the *cestui que trust*, or, better, the beneficiary.

TRUSTEE PROCESS. A process by which goods or credits of a debtor in the hands of a third person may be reached by an attaching creditor; it is similar to the garnishee process. See chapter on RECOVERY OF DEBTS.

U.

USURY. See chapter on INTEREST AND USURY.

V.

VAGABOND, or VAGRANT. One who wanders about idly, and with no home, and begs, and will not work.

VERDICT. The unanimous decision made by a jury and announced to the court.

VOUCHER. The written evidence of the truth of entries or charges.

W.

WAIVER. The abandonment of a right, or a refusal to accept it.

WARD. See chapter on GUARDIAN AND WARD.

WARRANTY. See chapter on SALES.

WAY. A right of way is the privilege which some person, or a certain description of persons, have of going over another man's land.

WILL. See chapter on WILLS.

WITNESS. One who testifies in court under oath or affirmation to what he knows. Also one who signs his name to an instrument, in evidence that it was executed in his presence; he is then called an attesting or subscribing witness.

WRECK. Commonly used as meaning a vessel that is cast away. In maritime law, it means the vessel or goods cast away on land by the sea, or found at low water, between high and low water mark.

WRIT. A written precept issued by a competent court in the name of the State, commanding the person or officer to whom it is addressed to do what is required therein. It is usually attested by a judge, and countersigned by the clerk of his court.

TABLE OF INTEREST AT SIX PER CENT.

\$1	\$2	\$3	\$4	\$5	Days.	\$6	\$7	\$8	\$9	\$10
					1					
					2					
					3					1
					4					1
					5					1
				1	6		1			1
				1	7		1			1
			1	.1	8		1			1
			1	.1	9		1			1
			1	.1	10		1			1
		1	.1	.1	11		1			1
		1	.1	.1	12		1			1
		1	.1	.1	13		1			1
		1	.1	.1	14		1			1
	1	.1	.1	.1	15		2			2
	1	.1	.1	.1	16		2			2
	1	.1	.1	.1	17		2			2
	1	.1	.1	.1	18		2			2
	1	.1	.1	.1	19		2			2
	1	.1	.1	.1	20		2			2
	1	.1	.1	.1	21		2			2
	1	.1	.1	.1	22		2			2
	1	.1	.1	.1	23		2			2
	1	.1	.1	.1	24		2			2
	1	.1	.1	.1	25		2			2
	1	.1	.1	.1	26		2			2
	1	.1	.1	.1	27		2			2
	1	.1	.1	.1	28		2			2
	1	.1	.1	.1	29		2			2
1	.1	.1	.1	.1	30		2			2
1	.1	.1	.1	.1	31		2			2
1	.1	.1	.1	.1	32		2			2
1	.1	.1	.1	.1	33		2			2
1	.1	.1	.1	.1	34		2			2
1	.1	.1	.1	.1	35		2			2
1	.1	.1	.1	.1	36		2			2
1	.1	.1	.1	.1	37		2			2
1	.1	.1	.1	.1	38		2			2
1	.1	.1	.1	.1	39		2			2
1	.1	.1	.1	.1	40		2			2
1	.1	.1	.1	.1	41		2			2
1	.1	.1	.1	.1	42		2			2
1	.1	.1	.1	.1	43		2			2
1	.1	.1	.1	.1	44		2			2
1	.1	.1	.1	.1	45		2			2
1	.1	.1	.1	.1	46		2			2
1	.1	.1	.1	.1	47		2			2
1	.1	.1	.1	.1	48		2			2
1	.1	.1	.1	.1	49		2			2
1	.1	.1	.1	.1	50		2			2
1	.1	.1	.1	.1	51		2			2
1	.1	.1	.1	.1	52		2			2
1	.1	.1	.1	.1	53		2			2
1	.1	.1	.1	.1	54		2			2
1	.1	.1	.1	.1	55		2			2
1	.1	.1	.1	.1	56		2			2
1	.1	.1	.1	.1	57		2			2
1	.1	.1	.1	.1	58		2			2
1	.1	.1	.1	.1	59		2			2
1	.1	.1	.1	.1	60		2			2
1	.1	.1	.1	.1	61		2			2
1	.1	.1	.1	.1	62		2			2
1	.1	.1	.1	.1	63		2			2
1	.1	.1	.1	.1	64		2			2
1	.1	.1	.1	.1	65		2			2
1	.1	.1	.1	.1	66		2			2
1	.1	.1	.1	.1	67		2			2
1	.1	.1	.1	.1	68		2			2
1	.1	.1	.1	.1	69		2			2
1	.1	.1	.1	.1	70		2			2
1	.1	.1	.1	.1	71		2			2
1	.1	.1	.1	.1	72		2			2
1	.1	.1	.1	.1	73		2			2
1	.1	.1	.1	.1	74		2			2
1	.1	.1	.1	.1	75		2			2
1	.1	.1	.1	.1	76		2			2
1	.1	.1	.1	.1	77		2			2
1	.1	.1	.1	.1	78		2			2
1	.1	.1	.1	.1	79		2			2
1	.1	.1	.1	.1	80		2			2
1	.1	.1	.1	.1	81		2			2
1	.1	.1	.1	.1	82		2			2
1	.1	.1	.1	.1	83		2			2
1	.1	.1	.1	.1	84		2			2
1	.1	.1	.1	.1	85		2			2
1	.1	.1	.1	.1	86		2			2
1	.1	.1	.1	.1	87		2			2
1	.1	.1	.1	.1	88		2			2
1	.1	.1	.1	.1	89		2			2
1	.1	.1	.1	.1	90		2			2
1	.1	.1	.1	.1	91		2			2
1	.1	.1	.1	.1	92		2			2
1	.1	.1	.1	.1	93		2			2
1	.1	.1	.1	.1	94		2			2
1	.1	.1	.1	.1	95		2			2
1	.1	.1	.1	.1	96		2			2
1	.1	.1	.1	.1	97		2			2
1	.1	.1	.1	.1	98		2			2
1	.1	.1	.1	.1	99		2			2
1	.1	.1	.1	.1	100		2			2
1	.1	.1	.1	.1	101		2			2
1	.1	.1	.1	.1	102		2			2
1	.1	.1	.1	.1	103		2			2
1	.1	.1	.1	.1	104		2			2
1	.1	.1	.1	.1	105		2			2
1	.1	.1	.1	.1	106		2			2
1	.1	.1	.1	.1	107		2			2
1	.1	.1	.1	.1	108		2			2
1	.1	.1	.1	.1	109		2			2
1	.1	.1	.1	.1	110		2			2
1	.1	.1	.1	.1	111		2			2
1	.1	.1	.1	.1	112		2			2
1	.1	.1	.1	.1	113		2			2
1	.1	.1	.1	.1	114		2			2
1	.1	.1	.1	.1	115		2			2
1	.1	.1	.1	.1	116		2			2
1	.1	.1	.1	.1	117		2			2
1	.1	.1	.1	.1	118		2			2
1	.1	.1	.1	.1	119		2			2
1	.1	.1	.1	.1	120		2			2
1	.1	.1	.1	.1	121		2			2
1	.1	.1	.1	.1	122		2			2
1	.1	.1	.1	.1	123		2			2
1	.1	.1	.1	.1	124		2			2
1	.1	.1	.1	.1	125		2			2
1	.1	.1	.1	.1	126		2			2
1	.1	.1	.1	.1	127		2			2
1	.1	.1	.1	.1	128		2			2
1	.1	.1	.1	.1	129		2			2
1	.1	.1	.1	.1	130		2			2
1	.1	.1	.1	.1	131		2			2
1	.1	.1	.1	.1	132		2			2
1	.1	.1	.1	.1	133		2			2
1	.1	.1	.1	.1	134		2			2
1	.1	.1	.1	.1	135		2			2
1	.1	.1	.1	.1	136		2			2
1	.1	.1	.1	.1	137		2			2
1	.1	.1	.1	.1	138		2			2
1	.1	.1	.1	.1	139		2			2
1	.1	.1	.1	.1	140		2			2
1	.1	.1	.1	.1	141		2			2
1	.1	.1	.1	.1	142		2			2
1	.1	.1	.1	.1	143		2			2
1	.1	.1	.1	.1	144		2			2
1	.1	.1	.1	.1	145		2			2
1	.1	.1	.1	.1	146		2			2
1	.1	.1	.1	.1	147		2			2
1	.1	.1	.1	.1	148		2			2
1	.1	.1	.1	.1	149		2			2
1	.1	.1	.1	.1	150		2			2
1	.1	.1	.1	.1	151		2			2
1	.1	.1	.1	.1	152		2			2
1	.1	.1	.1	.1	153		2			2
1	.1	.1	.1	.1	154		2			2
1	.1	.1	.1	.1	155		2			2
1	.1	.1	.1	.1	156		2			2
1	.1	.1	.1	.1	157		2			2
1	.1	.1	.1	.1	158		2			2
1	.1	.1	.1	.1	159		2			2
1	.1	.1	.1	.1	160		2			2
1	.1	.1	.1	.1	161		2			2
1	.1	.1	.1	.1	162		2			2
1	.1	.1	.1	.1	163		2			2
1	.1	.1	.1	.1	164		2			2
1	.1	.1	.1	.1	165		2			2
1	.1	.1	.1	.1	166		2			2
1	.1	.1	.1	.1	167		2			2
1	.1	.1	.1	.1	168		2			2
1	.1	.1	.1	.1	169		2			2
1	.1	.1	.1	.1	170		2			2
1	.1	.1	.1	.1	171		2			2
1	.1	.1	.1	.1	172		2			2
1	.1	.1	.1	.1	173		2			2
1	.1	.1	.1	.1	174		2			2
1	.1	.1	.1	.1	175		2			2
1	.1	.1	.1	.1	176		2			2
1	.1	.1	.1	.1	177		2			2
1	.1	.1	.1	.1	178		2			2
1	.1	.1	.1	.1	179		2			2
1	.1	.1	.1	.1	180		2			2
1	.1	.1	.1	.1	181		2			2
1	.1	.1	.1	.1	182		2			2
1	.1	.1	.1	.1	183		2			2
1	.1	.1	.1	.1	184		2			2
1	.1	.1	.1	.1	185		2			2
1	.1	.1	.1	.1						

TABLE OF INTEREST AT SIX PER CENT.

\$20	\$30	\$40	\$50	\$60	Days.	\$70	\$80	\$90	\$100	\$200
1	1	1	1	1	1	1	1	2	2	3
1	1	1	2	2	2	2	3	3	3	7
1	2	2	3	3	3	4	4	5	5	10
1	2	3	3	4	4	5	5	6	7	13
2	3	3	4	5	5	6	7	8	8	17
2	3	4	5	6	6	7	8	9	10	20
2	4	5	6	7	7	8	9	11	12	23
3	4	5	7	8	8	9	11	12	13	27
3	5	6	8	9	9	11	12	14	15	30
3	5	7	8	10	10	12	13	15	17	33
4	6	7	9	11	11	13	15	17	18	37
4	6	8	10	12	12	14	16	18	20	40
4	7	9	11	13	13	15	17	20	22	43
5	7	9	12	14	14	16	19	21	23	47
5	8	10	13	15	15	18	20	23	25	50
5	8	11	13	16	16	19	21	24	27	53
6	9	11	14	17	17	20	23	26	28	57
6	9	12	15	18	18	21	24	27	30	60
6	10	13	16	19	19	22	25	29	32	63
7	10	13	17	20	20	23	27	30	33	67
7	11	14	18	21	21	25	28	32	35	70
7	11	15	18	22	22	26	29	33	37	73
8	12	15	19	23	23	27	31	35	38	77
8	12	16	20	24	24	28	32	36	40	80
8	13	17	21	25	25	29	33	38	42	83
9	13	17	22	26	26	30	35	39	43	87
9	14	18	23	27	27	32	36	41	45	90
9	14	19	23	28	28	33	37	42	47	93
10	15	19	24	29	29	34	39	44	48	97
10	15	20	25	30	30	35	40	45	50	1.00
11	17	22	28	33	33	39	44	50	55	1.10
11	17	23	28	34	34	40	45	51	57	1.13
20	30	40	50	60	60	70	80	90	1.00	2.00
21	32	42	53	63	63	74	84	95	1.05	2.10
21	32	43	53	64	64	75	85	96	1.07	2.13
30	45	60	75	90	90	1.05	1.20	1.35	1.50	3.00
31	47	62	78	93	93	1.09	1.24	1.40	1.55	3.10
31	47	63	78	94	94	1.10	1.25	1.41	1.57	3.13
<i>Months</i>										
40	60	80	1.00	1.20	4	1.40	1.60	1.80	2.00	4.00
50	75	1.00	1.25	1.50	5	1.75	2.00	2.25	2.50	5.00
60	90	1.20	1.50	1.80	6	2.10	2.40	2.70	3.00	6.00
70	1.05	1.40	1.75	2.10	7	2.45	2.80	3.15	3.50	7.00
80	1.20	1.60	2.00	2.40	8	2.80	3.20	3.60	4.00	8.00
90	1.35	1.80	2.25	2.70	9	3.15	3.60	4.05	4.50	9.00
1.00	1.50	2.00	2.50	3.00	10	3.50	4.00	4.50	5.00	10.00
1.10	1.65	2.20	2.75	3.30	11	3.85	4.40	4.95	5.50	11.00
1.20	1.80	2.40	3.00	3.60	12	4.20	4.80	5.40	6.00	12.00
2.40	3.60	4.80	6.00	7.20	24	8.40	9.60	10.80	12.00	24.00
3.60	5.40	7.20	9.00	10.80	36	12.60	14.40	16.20	18.00	36.00
4.80	7.20	9.60	12.00	14.40	48	16.80	19.20	21.60	24.00	48.00

TABLE OF INTEREST AT SIX PER CENT.

\$300	\$400	\$500	\$600	Days.	\$700	\$800	\$900	\$1000
.05	.07	.08	.10	1	.12	.13	.15	.17
.10	.13	.17	.20	2	.23	.27	.30	.33
.15	.20	.25	.30	3	.35	.40	.45	.50
.20	.27	.33	.40	4	.47	.53	.60	.67
.25	.33	.42	.50	5	.58	.67	.75	.83
.30	.40	.50	.60	6	.70	.80	.90	1.00
.35	.47	.58	.70	7	.82	.93	1.05	1.17
.40	.53	.67	.80	8	.92	1.07	1.20	1.33
.45	.60	.75	.90	9	1.05	1.20	1.35	1.50
.50	.67	.83	1.00	10	1.17	1.33	1.50	1.67
.55	.73	.92	1.10	11	1.28	1.47	1.65	1.83
.60	.80	1.00	1.20	12	1.40	1.60	1.80	2.00
.65	.87	1.08	1.30	13	1.52	1.73	1.95	2.17
.70	.92	1.17	1.40	14	1.63	1.87	2.10	2.33
.75	1.00	1.25	1.50	15	1.75	2.00	2.25	2.50
.80	1.07	1.33	1.60	16	1.87	2.13	2.40	2.67
.85	1.13	1.42	1.70	17	1.98	2.27	2.55	2.83
.90	1.20	1.50	1.80	18	2.10	2.40	2.70	3.00
.95	1.27	1.58	1.90	19	2.22	2.53	2.85	3.17
1.00	1.33	1.67	2.00	20	2.33	2.67	3.00	3.33
1.05	1.40	1.75	2.10	21	2.45	2.80	3.15	3.50
1.10	1.47	1.83	2.20	22	2.57	2.92	3.30	3.67
1.15	1.53	1.92	2.30	23	2.68	3.07	3.45	3.83
1.20	1.60	2.00	2.40	24	2.80	3.20	3.60	4.00
1.25	1.67	2.08	2.50	25	2.92	3.33	3.75	4.17
1.30	1.73	2.17	2.60	26	3.03	3.47	3.90	4.33
1.35	1.80	2.25	2.70	27	3.15	3.60	4.05	4.50
1.40	1.83	2.33	2.80	28	3.27	3.73	4.20	4.67
1.45	1.92	2.42	2.90	29	3.38	3.87	4.35	4.83
1.50	2.00	2.50	3.00	30	3.50	4.00	4.50	5.00
1.65	2.20	2.75	3.30	33	3.85	4.40	4.95	5.50
1.70	2.27	2.83	3.40	34	3.97	4.53	5.10	5.67
3.00	4.00	5.00	6.00	60	7.00	8.00	9.00	10.00
3.15	4.20	5.25	6.30	63	7.35	8.40	9.45	10.50
3.20	4.27	5.33	6.40	64	7.47	8.53	9.60	10.67
4.50	6.00	7.50	9.00	90	10.50	12.00	13.50	15.00
4.65	6.20	7.75	9.30	93	10.85	12.40	13.95	15.50
4.70	6.72	7.83	9.40	94	10.97	12.53	14.10	15.67
				Months				
6.00	8.00	10.00	12.00	4	14.00	16.00	18.00	20.00
7.50	10.00	12.50	15.00	5	17.50	20.00	22.50	25.00
9.00	12.00	15.00	18.00	6	21.00	24.00	27.00	30.00
10.50	14.00	17.50	21.00	7	24.50	28.00	31.50	35.00
12.00	16.00	20.00	24.00	8	28.00	32.00	36.00	40.00
13.50	18.00	22.50	27.00	9	31.50	36.00	40.50	45.00
15.00	20.00	25.00	30.00	10	35.00	40.00	45.00	50.00
16.50	22.00	27.50	33.00	11	38.50	44.00	49.50	55.00
18.00	24.00	30.00	36.00	12	42.00	48.00	54.00	60.00
36.00	48.00	60.00	72.00	24	84.00	96.00	108.00	120.00
54.00	72.00	90.00	108.00	36	126.00	144.00	162.00	180.00
72.00	96.00	120.00	144.00	48	168.00	192.00	216.00	240.00

DOLLARS	DAYS																												
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
11	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
12	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
13	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
14	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
16	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
17	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
18	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
19	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
20	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
21	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
22	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
23	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
24	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
25	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
26	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
27	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
28	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
29	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
30	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
40	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
50	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
60	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
70	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
80	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
90	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1
100	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1

DOLLARS	MONTHS										
	1	2	3	4	5	6	7	8	9	10	11
1	1	1	2	2	3	4	4	5	5	6	6
2	1	2	4	4	5	6	7	8	11	12	12
3	2	4	5	7	9	11	12	14	15	18	19
4	2	5	7	9	12	14	16	19	21	23	26
5	3	6	9	12	15	18	20	23	26	29	32
6	4	7	11	14	18	21	25	28	32	35	39
7	4	8	12	16	20	25	29	33	36	41	44
8	5	9	14	19	23	28	33	37	42	47	51
9	5	11	16	21	26	32	37	43	47	53	57
10	6	12	18	23	29	35	41	47	53	59	64
11	6	13	19	24	30	36	42	48	54	60	66
12	7	14	21	26	32	38	44	50	56	62	68
13	8	15	22	28	34	40	46	52	58	64	70
14	8	16	23	29	35	41	47	53	59	65	71
15	9	18	24	30	36	42	48	54	60	66	72
16	9	19	25	31	37	43	49	55	61	67	73
17	10	20	26	32	38	44	50	56	62	68	74
18	11	21	27	33	39	45	51	57	63	69	75
19	11	22	28	34	40	46	52	58	64	70	76
20	12	23	29	35	41	47	53	59	65	71	77
21	12	25	31	37	43	49	55	61	67	73	79
22	13	26	32	38	44	50	56	62	68	74	80
23	15	29	35	41	47	53	59	65	71	77	83
24	15	30	36	42	48	54	60	66	72	78	84
25	16	31	37	43	49	55	61	67	73	79	85
26	17	32	38	44	50	56	62	68	74	80	86
27	18	33	39	45	51	57	63	69	75	81	87
28	18	34	40	46	52	58	64	70	76	82	88
29	19	35	41	47	53	59	65	71	77	83	89
30	20	36	42	48	54	60	66	72	78	84	90
40	23	47	53	59	65	71	77	83	89	95	101
50	29	53	59	65	71	77	83	89	95	101	107
60	35	70	76	82	88	94	100	106	112	118	124
70	41	76	82	88	94	100	106	112	118	124	130
80	47	82	88	94	100	106	112	118	124	130	136
90	53	88	94	100	106	112	118	124	130	136	142
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